No. 3862

United States

Circuit Court of Appeals

For the Ninth Circuit.

In the Matter of ELLIOTT-O'BRIEN COMPANY, a Corporation, Bankrupt.

S. G. CLIMENSON, as Trustee of ELLIOTT-O'BRIEN COMPANY, a Corporation, Bankrupt,

Appellant,

vs.

CARSON, PIRIE, SCOTT & COMPANY, a Corporation, COFFMAN, DOBSON BANK & TRUST COMPANY, a Corporation, BEE NUGGETT PUBLISHING COMPANY, a Corporation,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for the Western District of Washington, Southern Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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PROOF OF DEBT AND POWER OF ATTORNEY.

At Chicago, in the county of Cook and state of Illinois, on the sixteenth day of May, 1921, comes W. H. Whiteside of said county and State, and says:

That he is Asst. Treasurer of Carson, Pirie, Scott & Co., a corporation organized under and existing by virtue of the laws of the State of Illinois, and hereinafter designated as claimant.

That said claimant is doing business at the place, county and state aforesaid, and that affiant is duly authorized to make this proof, and execute this power of attorney, and that said bankrupt was, at and before the time the petition in bankruptcy was filed herein, and still is, justly and truly indebted to the said claimant in the sum of Two Thousand Nine Hundred Seventy-six and 80/100 Dollars.

That the consideration of said debt is as follows:

Goods, wares and merchandise, sold and delivered to the said bankrupt, at their special instance and request according to statement hereto attached and marked Exhibit "A."

That no part of said debt has been paid, except ——; that there are no offsets or counterclaims to the same except ——, and that this deponent has not, nor has any person for or on behalf of said claimant, or to this deponent's knowledge or belief, for said claimant's use, had or received any manner of security for said debt whatever, nor has any judgment been rendered therefor, or any part thereof, nor has any

note or other evidence of said debt been received, except as herein stated.

Said claimant hereby constitutes and appoints Seattle Merchants Association of Seattle, Wash., and ——, attorney in fact to join with other creditors and proceed in bankruptcy against the above-named debtor, under the provisions of the Act entitled "An Act to Establish a Uniform System of Bankruptcy throughout the United States, approved July 1, 1898," and the amendments thereto, and to execute in the name of the undersigned, any usual or necessary petition or paper in that behalf and to represent the claimant at all meetings of creditors herein, with authority to vote for Trustee, also to accept any composition proposed by said bankrupt in satisfaction of their debts, and upon all propositions submitted to the creditors, and to receive dividends and all notices in said cause.

W. H. WHITESIDE,
Asst. Treas.

[Indorsed]: Filed this Jun. 10, 1921, 10 A. M. R. F. Laffoon, Referee in Bankruptcy. [2*]

Claim of Coffman-Dobson Bank & Trust Co.

COMBINATION PROOF FOR DEBT DUE CORPORATION, PARTNERSHIP, INDIVIDUAL, SECURED OR UNSECURED.

At Chehalis, in the Western District of Washington, on the 27th day of May, 1921, A. D., came D.

*Page-number appearing at foot of page of original certified Transcript of Record.

T. Coffman, of Chehalis, in the District of Washington, and made oath and says that:

(1) (a) He is the Cashier of the Coffman-Dobson Bank & Trust Co. (there being no Treasurer of said Corporation), a corporation incorporated by and under the laws of the State of Washington, and carrying on business at Chehalis, in the County of Lewis and State of Washington, and that he is duly authorized to make this proof and says that the said Elliott-O'Brien Co., the person (firm or corporation) by (or against) whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is justly indebted to said corporation.

(b) He is one of the firm of ——, consisting of himself and —— of —— in the County of ——, the person (firm or corporation) by (or against) whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is justly indebted to the deponent's said firm.

(c) —— the person (firm or corporation) by (or against) whom a petition for the adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said deponent.

In the sum of (2) Eighteen Hundred Fifty-six and 92/100 ($1856.92) Dollars; that the consideration of the said debt is as follows:

(3) Money loaned to said bankrupt by claimant at the request of said bankrupt and remaining unpaid and past due, more particularly set forth in

the itemized account hereto annexed and made a part of this proof; that no part of said debt has been paid, except as shown by said account; that there are no setoffs or counterclaims to same except as shown by said account;

(4) That the said Coffman-Dobson Bank & Trust Co. has not, nor has any person by its order, or to the knowledge and belief of said deponent, for its use, had or received any manner of security (4) whatever, for such account; nor has any judgment been rendered thereon (3).

And that the only securities held by said Coffman-Dobson Bank & [3] Trust Co. for said debt are the following (listing and describing securities): none. That the duties of affiant correspond most nearly with those of Treasurer of a corporation, there being no Treasurer of claimant corporation.

D. T. COFFMAN,
Cashier of Coffman-Dobson Bank & Trust Co.

[Indorsed]: Filed this June 10, 1921, 10 A. M. R. F. Laffoon, Referee in Bankruptcy. [4]

Objections of Trustee to Claim of Carson, Pirie, Scott & Company.

Comes now S. G. Climenson, trustee herein, by his attorney, Nelson R. Anderson, and respectfully shows the Court:

I.

That at all times herein mentioned, Elliott-

O'Brien Company was a corporation organized and existing under and by virtue of the laws of the State of Washington with its principal place of business at Chehalis, Washington.

II.

That on the 17th day of May, 1921, the said Elliott-O'Brien Company, a corporation, was declared and adjudged bankrupt within the meaning of the Acts of Congress relating to bankruptcy by the above-entitled court and the Hon. Edward E. Cushman, Judge thereof, upon petition alleging bankruptcy filed in said court on May 10, 1921; that thereafter, and in due course of proceedings in said bankruptcy, S. G. Climenson was elected trustee of the bankrupt estate of Elliott-O'Brien Company and is the duly elected, qualified and acting trustee of said estate.

III.

That on January 10, 1921, said bankrupt was indebted to Carson, Pirie, Scott & Co., in the sum of $6590.47 for goods, wares and merchandise sold and delivered by said claimant to said bankrupt; that thereafter said indebtedness was increased by sales of merchandise and by charges for interest as follows: [5]

Balance Jan. 1, 1921				$6590.47
Bal. due on remittance of 2/24/21		Int. for overtime		3.64
Bal. due on remittance of 2/4/21		Credit used twice		2.25
Bal. due on remittance of 4/29/21		Int. for overtime		17.59
Bal. due on remittance of 3/5/21		Int. for overtime		5.37
Bal. due on remittance of 4/1/21		Int. for overtime		8.19
1921	Net Cash	2% 10 days	6% 10 days	
Jan. 6		16.91		
7		233.76		
8		9.85	.65	
12	11.25			
13	15.91			
17		210.93		
		5.32		
Mar. 8		61.50		
24		33.51		
31		30.48		
	Crd. Mdse.			
Jan. 5		14.62		
6		21.14		
18	25.97			
13	9.00			
	7.81	566.50	.65	599.34
				$7186.85

IV.

That after January 10, 1921, the bankrupt herein made the following payments to said claimant on account on the dates hereinafter set forth, to wit:

Jan.	25	265.50
	27	495.55
Feb.	4	517.54
	24	661.59
Mar.	5	715.80
Apr.	1	589.66
	25	500.00
	29	508.47
		$ 4254.11 [6]

V.

That the foregoing payments amounting to $4,254.11 were made by said bankrupt to said claimant within four months of the filing of said petition in bankruptcy and while said bankrupt was insolvent, to apply on the general unsecured claim of said claimant amounting to $7,186.85, and that by virtue of said payment said claimant secured an unlawful preference over other creditors of the same class as said claimant in the estate of said bankrupt, thereby depleting the estate of said bankrupt to the damage and injury of the general and unsecured creditors of said bankrupt of the same class as the claimant; that said claimant knew or had reasonable cause to believe that said transfers and payments then operated as a preference under the Acts of Congress relating to bankruptcy and prohibiting a preference of creditors.

VI.

That on January 1, 1921, the bankrupt was indebted to claimant in the sum of $6.590.47 and thereafter became further indebted to said claimant in the sum $667.11. That after January 1, 1921, the bankrupt paid said claimant $4,324.84 to apply on said indebtedness.

That said payments of $4,324.84 by said bankrupt to said claimant paid current account of said claimant for 1921 one hundred per cent (100%) and in full, and a payment of $3,657.73 to apply on the indebtedness existing on January 1, 1921, resulting to payment of 55% of the old account of said claimant.

That the indebtedness of said bankrupt to the other creditors of said bankrupt on January 1, 1921, amounted to $4,275.41 and that the creditors herein have received no percentage on their indebtedness due on January 1, 1921, except 90% to Fleischner, Myer & Co., Royal Worster Corset Company and 20% to the Bee Nugett Publishing Company who have received preferences to that extent. That the assets of the bankrupt during 1921 were depleted by payment made to said claimant in the sum of $4,324.84, less the amount of merchandise furnished said bankrupt [7] by said claimant in the sum of $667.11, thereby diminishing the assets of said bankrupt by the sum of $3,657.73. That during 1921 the other creditors of said bankrupt were furnishing merchandise to said bankrupt for the entire amount of the indebtedness of the estate herein in the sum of $9,971.62, while said claimant was withdrawing from the assets of said bankrupt the sum of $3,657.73 over and above all merchandise furnished by it to said bankrupt; that the result and effect of the dealings between claimant and bankrupt was to prefer said claimant over and above the other creditors of said bankrupt by the bankrupt receiving merchandise from the other creditors and taking the proceeds of the sales of said merchandise and paying them over to said claimant, thereby depleting and diminishing the assets of said estate to the damage and injury of said other unsecured creditors for the use and benefit of claimant herein; that said bankrupt on January 1, 1921, and at all times since was and is now in-

solvent, in this, that said bankrupt was unable to meet and pay its obligations in due course of business.

That the payments made by said bankrupt to said claimant resulted in said claimant receiving an unlawful preference over the other creditors of said bankrupt within the meaning of the laws of the State of Washington prohibiting insolvent corporations from giving any of its creditors an undue preference under the Trust Fund theory prevailing in said state.

WHEREFORE petitioner prays the Court that the claim of Carson, Pirie, Scott & Co., be disallowed, or be charged with receipt of a dividend equal to sixty per cent (55%) of its claim, and that it receive dividends on its claim only in the event that the dividends paid to creditors herein exceed the sum of sixty per cent (55%) and then only as to such excess payment over and above sixty per cent (55%).

S. G. CLIMENSON,
Trustee. [8]

[Indorsed]: Filed this Sep. 24, 1921, 10 A. M. R. F. Laffoon, Referee in Bankruptcy. [9]

Objections of Trustee to Claim of Coffman-Dobson Bank & Trust Co.

Comes now S. G. Climenson, trustee herein, by his attorney, Nelson R. Anderson, and respectfully shows the Court:

I.

That at all times herein mentioned Elliott-O'Brien

Company was a corporation organized and existing under and by virtue of the laws of the State of Washington with its principal place of business at Chehalis, Washington.

II.

That on the 17th day of May, 1921, the said Elliott-O'Brien Company, a corporation, was declared and adjudged bankrupt within the meaning of the Acts of Congress relating to bankruptcy by the above-entitled court and the Hon. Edward E. Cushman, Judge thereof, upon petition alleging bankruptcy, filed in said court on May 10, 1921; that thereafter, and in due course of proceedings in said bankruptcy, S. G. Climenson was elected trustee of the bankrupt estate of Elliott-O'Brien Company and is the duly elected, qualified and acting trustee of said estate.

III.

That Coffman-Dobson Bank & Trust Company, a corporation, has filed its claim for money loaned in the sum of $1800 and interest. [10]

That on January 1, 1921, said bankrupt was indebted to Coffman-Dobson Bank & Trust Company in the sum $5,500 for money loaned; that thereafter said indebtedness was increased by further loans and was reduced by payments as follows, to wit:

Jan. 1, 1921, 3 month note....	$ 2500.00	
Jan. 1, 1921, 3 month note....	1000.00	
Jan. 1, 1921, note	2000.00	
Jan. 22, 1921, 10 day note....	500.00	
Mch. 4, 1921, 7 day note.....	300.00	$ 6300.00

CREDITS:

Credit on $2500 note: April 14..	$ 500.00	
19..	500.00	
23..	500.00	
27..	500.00	
May 2..	500.00	$2500.00
Credit on $1000 note, April 5..	500.00	
9..	500.00	
Credit on Jan. 22 note, Feb. 22.	500.00	
Credit on Mch. 14 note, Mch. 17.	300.00	
Credit on Jan 1st note of $2000 (See claim filed herein)	143.08	$1943.08
Total credits		$4443.08

V.

That the foregoing payments amounting to $4,500 were made by said bankrupt to said claimant within four months of the filing of said petition in bankruptcy and while said bankrupt was insolvent, to apply on the general unsecured claim of said claimant amounting to $6,300.00, and that by virtue of said payment said claimant secured an unlawful preference over other creditors of the same class as said claimant in the estate of said bankrupt, thereby depleting the estate of said bankrupt to the damage and injury of the general unsecured creditors of said bankrupt of the same class as said claimant; that said claimant knew or had reasonable cause to believe that said transfers and payments then operated as a preference under the

acts of Congress relating to bankruptcy and prohibiting a preference of creditors. [11]

VI.

That on January 1, 1921, the bankrupt was indebted to said claimant in the sum of $5,500 and thereafter became further indebted to said claimant in the sum of $800, making a total indebtedness of $6,300. That after January 1, 1921, the bankrupt paid said claimant $4,500 and interest, to apply on said indebtedness.

That said payments of $4,500 by said bankrupt to said claimant paid the current account of said claimant for 1921 amounting to $800, 100% and in full, and made a payment of $3,700 to apply on the indebtedness existing on January 1, 1921, of $5,500, resulting in a payment of 67% of the old account of said claimant.

That the indebtedness of said bankrupt to other merchandise creditors of said bankrupt on January 1, 1921, amounted to $4,275.41 and that the creditors herein have received no percentage on their indebtedness due January 1, 1921, except 9% to Fleischner, Myer & Co., and Royal Worcester Corset Company, 20% to Bee Nuggett Publishing Co., and 55% to Carson, Pirie, Scott & Co., who have received preference to that extent and to whose claims objections have been made on the ground of preference; That the assets of the bankrupt during 1921 were depleted by payments made to said claimant in the sum of $4,500, less the amount of moneys loaned said bankrupt by said claimant in the sum of $800, thereby diminishing the assets of

said bankrupt by the sum of $4500 and interest. That during 1921 the other creditors of said bankrupt were furnishing merchandise and credits to said bankrupt for the entire amount of the indebtedness of the estate herein in the sum of $9,971.62 while said claimant was withdrawing from the assets of said bankrupt the sum of $4,500 over and above all credits furnished by it to said bankrupt; that the result and effect of the dealings between claimant and bankrupt was to prefer said claimant over and above the other creditors of said bankrupt by the bankrupt receiving merchandise and credits from the other creditors and taking the proceeds of the sales of said merchandise and paying them over to said claimant, thereby depleting and diminishing the assets of the estate herein to the [12] damage and injury of said other secured creditors for the use and benefit of claimant herein; that said bankrupt on January 1, 1921, and at all times since, was and is now insolvent, in this, that said bankrupt was unable to meet and pay its obligations in due course of business.

That the payments made by said bankrupt to said claimant resulted to said claimant receiving an unlawful preference over other creditors of said bankrupt within the meaning of the laws of the State of Washington prohibiting insolvent corporations from giving any of its creditors an undue preference under the Trust Fund theory prevailing in said State.

WHEREFORE, petitioner prays the Court that the claim of Coffman-Dobson Bank & Trust Com-

pany be disallowed, or be charged with receipt of a dividend equal to 67% of its claim and that it receive dividends on its claim only in the event that the dividends paid to creditors herein exceed the sum of 67%, and then only as to such excess payment over and above 67%.

S. G. CLIMENSON,
Trustee.

[Indorsed]: Filed this Sep. 24, 1921, 10:00 A. M. R. F. Laffoon, Referee in Bankruptcy. [13]

Answer of Carson, Pirie, Scott & Co. to Objections of Trustee.

Carson, Pirie, Scott & Co., answering the objections filed by the trustee to its claim duly verified and filed herein:

I.

Admits the allegations of paragraphs I, II, III and IV of said objections, except that the claimant alleges that the true amount of plaintiff's claim was $7,216.29, on which $4,254.11 was paid, leaving a balance of $2,962.18.

II.

Denies each allegation of paragraphs V and VI of said objections except as herein and in said claim admitted.

GEORGE N. WOODLEY, and
McCLURE & McCLURE,
Attorneys for Claimant.

[Indorsed]: Filed this Nov. 5, 1921. R. F. Laffoon, Referee in Bankruptcy. [14]

Order Allowing Claims.

WHEREAS, heretofore on the —— day of December, 1921, came on regularly for hearing and determination the objections of the trustee, to the allowance of the claims of Carson, Pirie, Scott & Co., Coffman-Dobson Bank & Trust Co., and Bee-Nugget Publishing Co., the trustee appearing personally and by his counsel, Nelson R. Anderson, in support of said objections and Carson, Pirie, Scott & Co., appearing by their counsel, Geo. N. Woodley, Esq., and Walter A. McClure, Esq., Coffman-Dobson Bank & Trust Co., and Bee-Nugget Publishing Co., appearing by their counsel, A. A. Hull, Esq., and testimony being offered in support of said objections and in opposition thereto, and the matter having been submitted to the Referee for his consideration and decision thereon, now, after due consideration of the law and the premises, and being in all things fully advised, the Referee does hereby ORDER:

That the objections aforesaid be, and they hereby are, dismissed, and the claims of said claimants objected to as aforesaid be, and they hereby are, allowed and established as valid claims against the estate of said bankrupt. Trustee excepts to order and whole thereof. Exception allowed.

Dated at Tacoma, December 9, 1921.

R. F. LAFFOON,
Referee.

[Indorsed]: Filed this Dec. 9, 1921, 10 A. M. R. F. Laffoon, Referee in Bankruptcy. [15]

Petition of Trustee for Review of Referee's Order.

Comes now S. G. Climenson as trustee of the above-named bankrupt, and respectfully shows the Court:

I.

That petitioner filed objections to the claims filed herein by Carson, Pirie, Scott & Co., Coffman-Dobson Bank & Trust Co., and Bee-Nuggett Publishing Co., on the ground of preferences and a hearing was had on the issue joined between the trustee and said claimants and the referee having made a decision in favor of said claimants and an order thereon having been duly filed and entered herein, wherein the objections of the trustee were dismissed and the claims of said claimants were allowed, and the trustee having duly excepted thereto and his exception having been regularly allowed, and the trustee feeling himself aggrieved by said decision and said order and said order being erroneous, in this, that said objections should have been sustained and said claims disallowed; that a review of said proceedings and said order should be had before the United States District Judge herein. [17]

WHEREFORE, trustee prays that said order be reviewed and reversed and that an order be entered sustaining the objections filed by the trustee to the claims of said claimants.

NELSON R. ANDERSON,
Attorney for Trustee.

[Indorsed]: Filed this Dec. 15, 1921, 11 A. M. R. F. Laffoon, Referee in Bankruptcy. [18]

Referee's Certificate on Review.

To the Honorable EDWARD E. CUSHMAN, District Judge:

I, R. F. Laffoon, the Referee in Bankruptcy in charge of this proceeding, DO HEREBY CERTIFY:—

That, in the course of such proceeding, an order, a copy of which is annexed to the petition hereinafter referred to, was made and entered on the 9th day of December, 1921.

That, on the 15th day of December, 1921, in such proceeding, feeling aggrieved thereon, the trustee herein filed a petition for review, which was granted.

That a summary of the evidence on which such order was based is as follows:

Adjudication was had herein on the 21st day of May, 1921. The claimant, Carson, Pirie, Scott & Co., a corporation, filed its claim herein on June 10, 1921 for the sum of $2976.80. On September 24, 1921, the trustee filed objections to said claim, and the allegations in paragraph VI thereof were:

> "That on January 1, 1921, the bankrupt was indebted to the claimant in the sum of $6,590.47 and thereafter became further indebted to said claimant in the sum of [19] $667.11; that, after January 1, 1921, the bankrupt paid said claimant $4,324.84 to apply on said indebtedness; that said payment of $4,324.84 by said bankrupt to said claimant paid the current account of said claimant for 1921 (100%) and in

full, and a payment of $3,657.73 to apply on the indebtedness existing on January 1, 1921, resulting in the payment of fifty-five (55%) per cent of the old account of said claimant."

Said objections conclude with a prayer that claimant's claim be disallowed, or that it be charged with receipt of a dividend equal to 55% of its claim, or that is receive no dividends on its claim until all other claimants have received dividends of 55%.

Claimant, in reply, alleged that the true amount of its claim was $7,216.29, on which $4,254.11, was paid, leaving a balance of $2,962.18.

It was conceded that the bankrupt was incorporated in 1917 with a capital stock of $15,000 paid in in cash, Ed O'Brien taking half the stock and William F. Elliott the other half; that Elliott paid in $3,000 of his own funds and borrowed the remainder, $4,500, from Charles O'Brien to finish paying for his stock and pledged his shares to Charles O'Brien to secure the loan; that Ed died and his estate passed into the hands of Charles, giving him control of the whole capital stock, which he held on about November, 1920.

William F. Elliott was manager of the business, the O'Briens taking no part in the managing. William F. Elliott was examined as a witness in this hearing and gave a comprehensive statement of the affairs of the bankrupt.

He states, on pages 29 and 30 of the transcript of testimony, that he and the O'Briens were salesmen for the claimant herein, Carson, Pirie, Scott & Co.,

prior to the inception of this *bankrupt* and the launching of this business.

It appears that, in about November, 1920, Charles [20] O'Brien and the O'Brien Estate were desirous of getting out of the business and sought to have the stock of goods reduced and the debts paid and the business sold out. The witness (the manager) proceeded to do this by putting on sales and running the stock down as best he could and so continued until he left on April 26, 1920.

He testifies, on pages 40 and 41, that, on January 1, 1921, they owed debts past due $3,970.68,
debts not due 7,108.15,
and the bank 5,500.00,

making a total of ..... $16,578.83.

On pages 42 and 43, he testified that the total indebtedness for merchandise for February 1st, was $12,727.53,
March 1st 14,316.24,
April 1st 12,616.61,
and that for sales for January were 6,026.99,
February 4,636.94,
March 4,417.19,
April 8,877.46,
and on page 44 that he bought goods during January, amounting to 2,580.16,
February 3,274.15,
March 4,478.35,
April 249.84,

and, on page 45, that the expenses per month were:

January	$2,396.78,
February	1,548.49,
March	1,583.84,
April	2,806.29.

[21]

and that during the years 1917, 1918, 1919 and 1920, Carson, Pirie, Scott & Co. was the principal creditor; that they bought about fifty per cent of their goods from that firm, and that during the year 1920 their indebtedness to that firm was about $16,000. On page 53 he says that Carson, Pirie, Scott & Co. sold them $566.50 worth of goods and afterwards refused to extend them any further credit until they brought up their past due bills; that Carson, Pirie, Scott & Co. wanted to get back to the 120 days limit of credit. On page 67 he says that the indebtedness for merchandise December 30, 1920, was $16,240.92, as compared with that for April 26, 1921, $12,616.61, and on page 68 that the inventory taken January 31, 1921, was $26,371.39 and, on page 69, that the net worth December 31, 1920, was $14,230, and that their inventory made April 22, 1921, shows a net worth of $2,000, showing a net loss of $12,000, during said time; that it cost $10,000 to $11,000 to do business for four months.

Mr. George Walker testifies (page 90 of the transcript) that he was receiver in the state court and took charge of the store on May 7, 1921, and that he took an inventory of the stock and fixtures showing the stock and fixtures as of the value of $16,200, on a cost basis, and that 25% should be

deducted therefrom for depreciation of value from cost. The receiver subsequently sold the stock and fixtures for $11,000, as reported to this court.

The claims filed in this cause to date amount to $6,740.29. I have no doubt from this *résumé* of figures that the bankrupt was insolvent in December, 1920, when the manager, as stated, started in to reduce the stock and pay the debts. The manager made every [22] possible effort to reduce the stock which could be made and to pay the debts during January, February, March and up to April 25th, when he abandoned the business and took service with the claimant herein, as he said because he had no further interest in the business.

In December, 1920, the bankrupt owed for merchandise about $16,240.92 and owed the bank $5500, making a known indebtedness of $21,740.92. Its inventory taken about December 31, 1920, was about $26,371.39, about $4,000 of which covered fixtures, leaving the net stock about $22,371.39, or about $630.47 more than the known debts. It would cost, and did cost more than $630.47 to convert the stock into cash for the payment of the debts. In fact, it cost about $12,000, so that insolvency existed then and never got any better.

The estate came over into this court with an inventory valuation of $16,200, less 25% depreciation, and proved indebtedness of $16,740.29, and sold for $11,000, net.

There is no question but what the claimant herein received from the bankrupt, after January 1, 1921, and before April 26, 1921, and within the four

months period the total sum of $3,657.73 to apply on its old account. The trustees contend that, at the time and times on which claimant received the several payments which made up this sum, it had knowledge of the insolvency of the bankrupt and good reason to believe it was receiving a preference in that amount.

On the other hand, claimant contends that the several payments received by it were made in due course of business and that the circumstances were not such as would lead it to believe that it was receiving a preference. The inventory showing was very good, $26,371.39, and, while the debt to claimant was very [23] large, yet the inventory would seem sufficient to pay it, and that, together with the manager's contention that he would reduce the stock and pay its debts, which he did actually proceed to do, might very easily lead claimant to believe that the manager was reducing all debts and not merely its debts.

Unless claimant had inside information, it could not know that the forced sale meant insolvency, or that one creditor was getting its debts paid to the exclusion of others. The fact that the O'Briens and the manager were former salesmen of the claimant would not bring home to it knowledge of the bankrupt's true condition and it has not been shown that claimant had actual knowledge. I do not believe that the claimant had knowledge of the insolvent condition of the bankrupt or sufficient reason to believe that it was receiving a preference.

Claimant's (Respondent's) Exhibit No. 2, fur-

nished claimant and others about January 1, 1921, purports to show the resources and liabilities as of December 31, 1920, and a net worth of $14,230.35, which, while it shows an impairment of the capital, does not show insolvency and, unless claimant had knowledge of the purpose of the dominant stockholder to close out the business, it was not likely to suspect insolvency.

As I understand the trustees contention, it is not material whether the creditor receiving the alleged preference knew of the insolvency or not, if he actually received a preference, he cannot hold it as against the other creditors under the state rule.

I have considered the cases cited by the trustees and believe Williams vs. Davidson (104 Wash. 315) to be the [24] strongest case cited in support of that theory. I do not think that the case cited goes that far. Mrs. Davidson, the creditor receiving the preference, bought up the whole estate and agreed to pay all creditors and in good faith thought she had done so, but unknown creditors appeared and claimed a part of the estate and the Court let them in. It is clear that she knew the estate was insolvent when she took it over and that she took it all and left nothing for the other creditors, should there be others.

In Thompson vs. Huron Lumber Co. (4 Wash. 600) the creditors receiving the preference had knowledge of the insolvency and the giving of the preference.

In Simpson vs. Western Hardware and Metal Co. (97 Wash. 626), the creditor receiving the pref-

erence had notice of the insolvency and that he was receiving a preference.

In Jones vs. Hoquiam Lumber & Shingle Co. (98 Wash. 172), the creditor, likewise, had notice of the insolvency. The corporation was unable to pay in money and the creditor took real property instead.

The case at bar is distinguished from the cases relied on by the trustee in that the creditor was informed by the manager that he could pay his debts by reducing the stock. Furthermore, claimant was not demanding full payment of its debt, but simply that its debt be brought down to the maximum credit limit, 120 days. So far as the record shows, all of the other claims were well within that limit.

The claim is made that the goodwill of this bankrupt was a valuable asset and should be considered in determining the solvency of the bankrupt. The testimony does not fix any definite value and I am unable to fix any. [25]

Goodwill, to have a commercial value, must yield a profit. An inspection of this record does not show that this company ever paid any dividends to its stockholders or that it ever made any profit. The $15,000 cash capital stock was worth from five to six per cent in the investment market. If their goodwill did not yield a profit over and above that five or six per cent, it was of no value. The location in the city was advantageous and enabled the receiver to make an advantageous sale of the estate. I do not see how a value could attach to a

goodwill that would not yield more than salaries and wages to clerks. It did not save the capital from impairment—although the manager, Elliott, thought it valuable, as well as Mr. Hart, who succeeded to the management on April 27, 1921.

If the bankrupt had been making a profit—unless it paid it out in dividends, which it did not do, it would have shown in the inventory. The inventory (Respondent's Exhibit No. 2) only shows an impairment of the capital.

The bankrupt had no means of getting money to pay its debts, but by selling its goods and the cost of selling depleted the estate without paying the debts. Claimant received all of the payments here complained of during the time the manager was running off his stock and, in my opinion, does not come within the rule contended for by the trustees —the "Trust Fund Theory."

The question presented on this review is whether or not the claimant should be held to have received a preference under the Act of Bankruptcy or under the laws of the State of Washington under the "trust fund theory."

I hand up herewith, for the information of the Judge, [26] the following papers:

1. The record book of this proceeding;
2. The petition on which this certificate is granted;
3. The transcript of the evidence taken and the exhibits admitted;
4. Briefs of counsel;
5. All other papers filed with me herein which are pertinent to this review.

Dated, Tacoma, Washington, January 27, 1922.

Respectively submitted:

R. F. LAFFOON,
Referee in Bankruptcy.

ADDENDA.

The question involved in the claim of the Coffman-Dobson Bank & Trust Company is the same as the foregoing. Dan Coffman, Cashier says that, on January 1, 1921, Mr. Elliott handed him Respondent's Exhibit No. 2; that the notes representing the bank's claim of $5,500, which had theretofore been carried as one day notes were executed as time notes to fall due April 1st; that, when the notes fell due, he called Mr. O'Brien over and asked him what he could do about it and he, O'Brien, promised to pay it off $1,000 a week. He further states, at page 145 of the transcript, that the bank was liquidating as any other bank was and, if they had cleared up their notes, the bank would likely have accommodated them again; that the bankrupt changed its bank account on May 3d and that incident put the bank on inquiry as to the [27] bankrupt's condition.

My holding is the same here as in the matter of the Carson, Pirie, Scott & Co. claim.

R. F. LAFFOON,
Referee in Bankruptcy.

The same question is raised in the claim of the Bee Nugget Publishing Company and my holding is the same in this.

R. F. LAFFOON,
Referee in Bankruptcy.

[Indorsed]: Filed this Jan. 27, 1922. R. F. Laffoon, Referee in Bankruptcy. [28]

Order Approving Ruling of Referee.

This cause having heretofore come regularly on for hearing on review of the ruling of R. F. Laffoon, referee in bankruptcy, in the matter of the objections of S. J. Climenson, trustee, to the allowance of the claims of Carson, Pirie, Scott & Co., Coffman-Dobson Bank & Trust Company, and the Bee-Nugget Publishing Company, the trustee appearing by Nelson R. Anderson, his attorney, and said creditors appearing by George N. Woodley, Walter A. McClure and A. A. Hull, their attorneys, and said matter having been argued and submitted and the Court having heretofore made and filed his memorandum decision in writing that the ruling of the referee should be approved,—

IT IS ORDERED that said ruling be, and the same is hereby, approved and that the objections of the trustee to said claims be, and the same are hereby, overruled and said claims allowed as filed, to which the trustee excepts and his exception is allowed.

Dated at Tacoma, Washington, this 13th day of March, A. D. 1922.

EDWARD E. CUSHMAN,
Judge.

O. K.—WALTER A. McCLURE,
For said Creditors.

[Indorsed]: Mar. 13, 1922. [29]

Memorandum Decision on Review.
Filed February 21, 1922.

McCLURE & McCLURE, GEO. N. WOODLEY, Esq., for Carson, Pirie, Scott & Co., Claimant.

A. A. HULL, Esq., J. E. MURRAY, Esq., for Claimant, Coffman-Dobson B. & T. Co., and Bee-Nugget Pub. Co.,

NELSON R. ANDERSON, Esq., for Trustee.

CUSHMAN, D. J.—Little can be added to the full, fair, careful, and painstaking statement of the Referee in his certificate.

Under the facts and the evidence, whatever date is fixed upon as that on which solvency ended and insolvency intervened, there is no such knowledge or notice of that fact shown upon the part of the alleged preference creditors as the law requires to deprive them of that advantage which they may have obtained. In addition to the Referee's reasons, it is only deemed necessary to add that—during a period of drastic deflation, following a period of extraordinary inflation, when the [30] judgment and calculation of business men are liable to be unsettled and to want in fullness of vision and a complete grasp of the relative worth of the various items entering into the value of a going merchandise business, the knowledge and notice of insolvency should be shown with much greater clearness than it can be contended was done in the present case.

The Referee's ruling is approved. [31]

Index to Abstract of Testimony.

[32]

Statement.

By Mr. ANDERSON.—We filed objections to the claim of Carson, Pirie, Scott & Co. on the ground that they had received a preference within the meaning of the bankruptcy act and also that they received a preference within the meaning of the State law. The evidence will show that this company was incorporated in the first part of 1917, and that along about November, 1920, the officers of the company realized that they could not conduct the business successfully decided to liquidate the concern, and they first thought they might find a purchaser, and they advertised for a purchaser, for the business as a going concern, conducting these negotiations through January, February, and March, but finding no one that would offer over 60 per cent for the business. The first of April they sent for a special sales agent to come to Chehalis and conduct a special sale. That was

done. This was in 1921. The evidence will show that the creditors, at least some of them, were advised of these facts, and that during the whole of 1921, the past due indebtedness was very large and kept increasing. The company was unable to pay its debts as they matured, sometimes running as long as six months before they could pay. With respect to Carson, Pirie, Scott & Co., the evidence will show that after the first of the year they refused to sell this concern at all, with the exception of a very small amount, of about $566. The position of the Carson-Pirie-Scott Company will appear more clearly when it is remembered that this company was incorporated by two men who were salesmen for Carson, Pirie, Scott & Co., and in fact was known as the Carson-Pirie-Scott store. This continued until up to the first of the year, when Carson, Pirie, Scott [33] & Co. stopped selling and commenced liquidating its account. Upon that, being unable to get goods from Carson, Pirie, Scott & Co., they went to other creditors and took their goods in and as they liquidated them they paid off Carson, Pirie, Scott & Co's. account. On the first of January the indebtedness of the Carson, Pirie, Scott & Co. was $6590. To-day it is $2,900. Since the first of the year Carson, Pirie, Scott & Co. sold them $566 worth of goods and collected in about $4,254.

Now, with respect to the bank, Coffman-Dobson Bank & Trust Co., it will appear that the first of the year the bankrupt gave its notes to the bank; one note was payable 3 months after date, January 1,

for $2,500; another one for $1,000 and another for $2,000; and on January 22d the bank loaned $500 on a ten-day note, and that was shortly afterwards paid off. On March 4 the bank accepted another note for 7 days for $300; that was shortly afterwards paid off. But speaking now of the three notes given on January 1, 1921,—the evidence will show that those notes were all paid off within thirty days of this bankruptcy. On April 5, a payment of $500 was made; April 9, $500; April 14, $500; April 19, $500; April 23, $500 and April 27, $500.

Mr. HULL.—If they were all paid off, on what do we base our claim?

Mr. ANDERSON.—It leaves the claim of the bank of $1800 plus interest.

Mr. McCLURE.—I understand counsel's statement as to both of these claims is not entirely accurate as to the figures?

Mr. ANDERSON.—I am pretending to give absolutely accurate figures on both the Carson-Pirie-Scott Claim and the Coffman-Dobson Bank claim. Further in regard to the bank's claim, the evidence will show that all the money loaned during 1921 has been repaid 100 per cent. These payments that are objected to here are for credits extended during 1920. [34]

With the Bee-Nugget claim, it appears that they likewise have received 100 per cent on the dollar for all the credit extended during 1921, and payments made on that account have been, April 4, $339.50, and April 25, $234.50. In other words, it

is the contention of the trustees that these creditors have received 100 cents on the dollar for all credit extended during 1921,—in contrast with other creditors who have received in some cases from nothing varying up to 75 per cent; and in addition to that they received payments on their old claims, in the case of the Bee-Nugget being 20 per cent on its old indebtedness of 1920, and the Carson-Pirie-Scott Company received about 55 per cent on the old claim, and in the case of the bank, they received 67 per cent.

Mr. HULL.—You are not questioning the payment made for the 1921 credit?

Mr. ANDERSON.—We have not made any contention during 1921, that they received any preference. Understand the trustee's theory is this: If any creditors during the month of April for instance sold merchandise to this bankrupt and at the same time received his pay for it, this estate has not been depleted; but where, as in the cases objected to by the trustee, the credit has long since been extended and then a payment is made, that is a preference under the state law, the same as it is under the bankruptcy within the four months period. It is only where payments are made on existing indebtedness running back some time that we claim preference. With respect to the Royal Corset Claim, they have stipulated that any decision your Honor renders with respect to this case will apply to them, and the same is true as to the [35] Fleischner, Mayer & Co. claim,—or do they waive their preference altogether?

COUNSEL.—No, they said they would abide by the decision of the Court in these other cases; that is to say, if the Court held that our theory was correct they would abide by it without any further argument.

Mr. McCLURE.—That was stated to the trustee, —they put it in the form of a letter.

Thereupon the following witnesses were called to sustain the issues on behalf of the trustee. [36]

Abstract of Testimony.

Testimony of Charles L. LeSourd, for the Trustee.

CHAS. L. LeSOURD, a witness on behalf of the Trustee.

Direct Examination.

By Mr. ANDERSON.—I am Trust Officer of Dexter-Horton National Bank, Seattle. On March 15, 1919, the Bank was appointed administrator w. w. a. of the estate of Ed. M. O'Brien, deceased, one of the stockholders of the Elliott-O'Brien Company. That was the Bank's first connection with the Company.

Individually, but not as an officer of the Bank, I have had some connection with the Elliott-O'Brien Company during the past year.

Q. Was there a meeting held in Seattle in November, 1920, at which there was an officer of the Elliott-O'Brien Company present, who made certain suggestions with a view of liquidating the estate?

(OBJECTION on behalf of claimants "as not binding on any of the creditors" and because

(Testimony of Charles L. LeSourd.)

"counsel (for trustee) in his statement shows he is not going back further than the 1st of January, 1921, and I submit the proposed testimony is entirely immaterial and incompetent under the issues as framed by counsel's opening statement."

Objection overruled—and EXCEPTION allowed.)

(AGREEMENT BETWEEN COUNSEL that testimony taken at hearing is to be taken and considered with respect to all claims and that objections interposed by counsel for either of the claimants, are to apply to all of the claims.)

A. In the latter part of November or the first of December, 1920, Mr. Chas. H. O'Brien, brother of the deceased, Ed. O'Brien, and Mr. Elliott dropped into my office and had a talk concerning the store at Chehalis. Mr. O'Brien at that time was dissatisfied with the way things were going,—with the way the store had been conducted, and the present condition of the store—and spoke of closing it out, meaning, I believe, he wanted to sell it out as a going concern. (Tes., p. 8.)

Mr. Elliott at that time spoke of having several months good business ahead of him. It was just before Christmas-time when he expected to have considerable Christmas trade, and he stated that if the store did not sell previous to February, in his opinion, he should [37] reduce the stock to $15,000. As I recall, the stock at that time was between $25,000 and $30,000. He (considered) he could reduce the stock by February, as I recall it, to about $15,000 when it was considered that a

(Testimony of Charles L. LeSourd.)

better sale could be accomplished at that time; the estate of Ed. O'Brien, deceased, had been disbursed and Chas. H. O'Brien, who was present on this occasion, had received 25 shares of the Elliott-O'Brien Company.

I recall no plans made at this meeting about advertising the business for sale.

I never had any correspondence with Carson, Pirie, Scott & Co. direct, regarding the Elliott-O'Brien Company—have had correspondence with the attorney, Mr. Davis, personally.

The file of letters now shown me, marked for identification, Trustee's Exhibit "A," are original letters which I received and correct carbon copies of letters which I mailed, and are part of my correspondence file.

On April 22d, I had occasion to go to Chehalis in reference to the Elliott-O'Brien matters for the reason that Mr. Elliott had indicated a desire to leave the store, having arranged another occupation and being about to turn the business over to Hart. I was requested to come down and check up matters with them before the transfer was made. I do not know when Elliott made his arrangements to leave—it was a short time before that that I had heard it; he actually left between April 22d and the end of the month—cannot recall exact date.

I called at the Coffman-Dobson Bank—talked with Mr. Donohue, vice-president, about the affairs of the Elliott-O'Brien Co.—told him I had been informed that they had demanded $1,000 a week on

(Testimony of Charles L. LeSourd.)

their indebtedness to them from the Elliott-O'Brien Co.—told Mr. Donohue that Hart was going to be in charge of the store and that it was Hart's intention to pay the Bank's claim, together with the other claims, as they could; but that the store was not taking in a great deal of money and that the Bank should not expect them to pay everything that they took in at the store, on the Bank's claim—that [38] they could not keep the store running in that way. That was about the extent of our conversation—talked with him only a few minutes—nothing said about the indebtedness of the bankrupt. Donohue said he had not personally been looking after the Elliott-O'Brien estate—did not seem to be very familiar with it.

I was told by Mr. Elliott that the store was advertised for sale during the first part of 1921—most of my information came from Mr. Hart or Mr. Elliott.

Cross-examination.

(By Mr. McCLURE.)

Dextor-Horton Trust & Savings Bank was executor with the will annexed of the estate of Ed. O'Brien—I handled the matter for the Bank, as an officer—Ed. O'Brien owned one-half of the capital stock of the company, 75 shares, par value $100.00 per share—the remaining capital stock was owned by W. F. Elliott. The total capital was $15,000 owned one-half by Ed. O'Brien's estate and one-half by Elliott.

On distribution of the estate, the 75 shares be-

(Testimony of Charles L. LeSourd.)

longing to Ed. O'Brien, deceased, were split three ways: 25 shares going to Ed. O'Brien's widow, Alice O'Brien, 25 shares to the brother, Chas. H. O'Brien of Chicago, and 25 shares to six nephews and nieces residing in Salt Lake. The Mr. O'Brien I mention in my testimony was this Mr. Chas. H. O'Brien who received 25 shares of the capital stock.

After the estate was disbursed (about February, 1920) the Bank ceased to have any connection with the matter—I heard nothing from the store from that time until the fall of 1921.

About the end of January (1921) Mr. C. H. O'Brien was leaving on a trip to the Bermuda Islands and sent me a power of attorney to represent him in any matters in connection with the store —I was representing him personally in this matter and no one else. Mr. O'Brien asked me to take up all such matters with Mr. C. P. Davis, his personal representative in Chicago, and accordingly, I wrote to Mr. Davis as the representative of Mr. C. H. O'Brien, the letters that counsel [39] has called to my attention (Trustee's Exhibit "A").

At the meeting in November, to which I have referred, Mr. C. H. O'Brien expressed himself to me as being dissatisfied because the merchandise stock had not been reduced largely—was being carried at too high an amount. He thought it should have been reduced in quantities, that they were carrying too much merchandise. That was the substance of his expression of dissatisfaction. Mr. Elliott, in that conversation, was quite optimistic—

(Testimony of Charles L. LeSourd.)

that if the business was not sold out, he would let it run for a few months more, and that he could reduce the stock very materially. Mr. O'Brien wanted the merchandise reduced because he wanted to reduce the indebtedness, also because he wanted to sell out the O'Brien interests in the business—to sell out and get the O'Brien interests reduced to cash. He wanted to reduce the stock in order that the store might be more easily a saleable proposition.

Q. Neither O'Brien nor Elliott had any idea in their minds from what they said that the Company was insolvent at that time?

A. Never mentioned it at that time.

In fact, Elliott said that they had two good months' business ahead of them and that he could raise a lot of money during those two months—should be able to reduce the stock of merchandise to about $15,000 by February. He did not say anything as to what the indebtedness would be after he had reduced the stock to $15,000.

I left Chehalis on April 22d—Mr. Hart was there then—had been there perhaps ten days or two weeks—at the instance of Mr. Chas. H. O'Brien—through me—for the purpose of assisting in reducing the stock, and taking the management of the store when Mr. Elliott left. Hart had been down there several times before, assisting Mr. Elliott when he put on sales for the purpose of reducing his stock. It is a difficult question to answer (whether the business was in good condi-

(Testimony of Charles L. LeSourd.)

tion when I went there April 22d)—the day I was there, Elliott and I went over the books and made a list of the indebtedness; [40] it was very high, totaling, I think, the sum of $18,000; that presumably covered the entire indebtedness of the concern, including the Bank account (I cannot just recall whether it included the taxes).

Previous to this time, two or three prospective purchasers for the business had interviewed us, but only one really concrete proposition was made. That was from Mr. Worth. I cannot recall the time, but imagine that it was about a week or ten days previous to this; I cannot say whether Mr. Worth's offer would have paid all of the creditors in full if accepted by the corporation, because his offer was based on so much of the inventory and the amount of goods on hand. We were anxious to sell. Mr. Worth first offered, as I recall it, seventy per cent on the replacement value of the merchandise, fixtures thrown in for nothing; later he raised that offer to 80% and still later to 90%, but I did not know whether we should accept it at ninety cents or not and wired to Mr. Davis about it. I considered that the Worth offer, if accepted, would at least pay the debts, and possibly a little on the capital stock.

Up to this visit of April 22d I thought the capital stock had some value—not any large value—but I did think it might have some value.

Along the end of the year (1920) we considered the capital stock worth fifty cents on the dollar.

(Testimony of Charles L. LeSourd.)

It was about November or December, 1920, that Mr. O'Brien told me to sell (the capital stock) at 50 cents on the dollar if we could get an offer. Mr. Elliott in fact made an offer of 50 cents on the dollar about that time, but for some reason, the negotiations were not closed.

I made this trip on April 22d because Mr. Elliott had another position and wanted to turn it over to Mr. Hart. Hart had come down there at my suggestion, to take charge, and both of the men had requested me to come down at the time the transfer was to be made.

All along, during these negotiations with respect to the possible [41] sale of the store, there was quite a serious legal question as to who should execute the papers (to effect the transfer) especially should Mr. Elliott leave, because there were no properly elected officers to sign any document. There were (originally) just two stockholders, Mr. Ed. O'Brien and Mr. Elliott, who also were trustees, Mr. Ed. O'Brien being president and Mr. Elliott secretary-treasurer. After the decease of O'Brien, there was no president and now the only other officer and trustee (Mr. Elliott) was leaving. We attempted to correct that situation by having a stockholders' meeting on that day (April 22d), at which Mr. C. H. O'Brien was elected president and Mr. Hart, I believe, secretary-treasurer. Mr. C. H. O'Brien was in Europe at that time. I represented him at the meeting by my power of attorney. He never qualified.

(Testimony of Charles L. LeSourd.)

My object in going to Chehalis on April 22d, 1921, was to check over all things with Mr. Elliott and Mr. Hart before Elliott left—as far as I could on that one day. We went over the debts, made a list of them and then we discussed the proposition of taking an inventory. The store was closed the day I was there, Friday, preparatory to opening a new sale on Saturday—re-pricing some of the stock and preparing to open a sale on Saturday morning. They were quite busy, expected to be busy the next day; and it was suggested that on Sunday they would put on a crew and take inventory of the merchandise on hand. So I came back to Seattle and Mr. Elliott agreed to stay over to help take the inventory. He had planned to leave right away, but stayed over and the inventory was prepared. Mr. Hart took a day or two to price it and then came up to see me. I think it was about the first or second of May when he came up,—with a list of the stock on hand at the replacement values. He showed me the figures and that was the time we determined the store was insolvent.

Q. What date was that?

A. I think that was May 2d, perhaps May 1st; May 2d, I think; May 2d, probably.

Q. May 2d will be Monday.

A. That was the day—it was on Monday. That was the first knowledge [42] I ever had that the store was insolvent.

Elliott had left prior to that time—just what day I do not recall.

(Testimony of Charles L. LeSourd.)

Redirect Examination.

(By Mr. ANDERSON.)

On May 2d, I found, as to the condition of the business, that the stock of merchandise on hand at replacement value was a considerable amount smaller than the debts of the concern.

Q. On April 1, 1921, wasn't it a fact that many of the debts of this corporation were long since past due and the corporation was not paying its bills as its debts fell due?

Mr. McCLURE.—We object to that as leading.

The COURT.—If he knows he may answer. (Exception allowed.)

A. I know there were some obligations past due.

Q. Isn't it a fact that even going back beyond April 1st, even as early as March 19, that the greatest concern of the officers of this company and yourself, was that the company would go into the hands of a receiver? I can refresh your recollection by looking at Trustee's Exhibit "A," dated March 19.

Mr. McCLURE.—I object to that. Their feeling or concern in the matter would not be binding on the creditors; it is a question of fact as to the condition of the business.

The COURT.—You have to give him some leniency to arrive at the facts. Objection overruled and exception allowed. [43]

Mr. McCLURE.—We further object on the ground that counsel is cross-examining his own witness.

(Testimony of Charles L. LeSourd.)

The COURT.—Go ahead.

A. Why, I thought this: I knew that there were a number of little bills past due and the merchandise was not being liquidated as rapidly as we had hoped for. I was afraid some creditor becoming uneasy, would come in and ask for a receivership on the ground of his past due account. I did not know at that time that the store was insolvent; that is, I did not know that they had assets less than their liabilities; but they had a large stock of merchandise on hand and I had a fear, as the letters here I think will reveal, that it would not be turned into cash as rapidly as their debts matured.

It is a fact that the claim of Carson, Pirie, Scott & Co. filed in this bankruptcy was first sent to me to be given attention.

Recross-examination.

(By Mr. McCLURE.)

The term "replacement value" which I have used, was an expression used by Mr. Hart and myself in discussing the value of the stock, and I understand it is the cost of replacing that same stuff on the shelves, buying it new and placing it on the shelves. Not the original cost, not necessarily the selling price for it, but the market or cost of replacing it on the shelves as it was, including the freight, cartage, insurance and all those items.

The COURT.—That was a time when the merchants were all reducing inventories, wasn't it?

A. Very, very rapidly, all of them. Prices had been dropping in merchandise during the fall of

(Testimony of Charles L. LeSourd.)

1920 quite rapidly, and more rapidly in the spring. I could not say how much more rapidly in the spring than in the fall, because I am not familiar enough with the dry goods business to answer that.

This business was a going business up until it was turned over to the State Court Receiver. As to whether the business had a goodwill I only know this: I have friends and relatives who live in the town and they used to tell me that if they ever wanted anything [44] good, they went down to the Elliott-O'Brien store to get it. The goodwill must have been excellent; the business must have had some goodwill.

I do not know of any creditors whatever who were trying to enforce their claims by a legal procedure, or any who entertained a wish to do so.

So far as the Elliott and the O'Brien interests are concerned, it was the expectation, up to say the 2d of May, 1921, when Hart came to Seattle and interviewed me, that the business would be continued. So far as I know, neither Mr. O'Brien nor Mr. Elliott had any idea that the store would be closed at that time. So far as I know they expected that it would continue as a going concern. It was operated right up to the day of the appointment of the receiver.

It is largely correct that the sole reason, or the principal inducing reason for the reduction of the stock of merchandise, was first, to reduce to cash, as nearly as it might be, the Ed O'Brien capital stock investment; and second, to reduce the size

(Testimony of Charles L. LeSourd.)

of the business so that some purchaser might be found for the business as a going concern. Of course, we all recognize the fact that a business like that, carrying merchandise stock of from $25,000 to $30,000 and an indebtedness running up to $15,000 or $20,000, is always in danger. It is not good business, and we wanted to reduce the stock and reduce the indebtedness at the same time, and operate the same in a better financial position; and then it would not take so much cash to buy it.

Q. Then Mr. Elliott was perfectly willing to continue the business by himself, was he not, as you understood it from him?

A. He had been very anxious to buy the business.

Q. He was a man of limited means? A. Yes.

Q. And he could not purchase 25 or 30 thousand dollars, but he could purchase 10 or 15 thousand dollars of it? That was one of the reasons for reducing the stock of merchandise, wasn't it? Or perhaps you could find some other purchaser who could pay 15 thousand dollars, but who could not purchase the larger sized stock? [45]

A. That is very true. The number of persons to whom we could sell the store largely increased if you got it down to a ten or fifteen thousand dollar proposition.

Mr. Elliott was indebted at that time to Mr. Chas. H. O'Brien in the sum of $4,500.00 and had all his stock collateralized.

Q. And when he talked about paying 50 cents on the dollar for more stock, it was also on the basis

(Testimony of Charles L. LeSourd.)

that he took the $5,000 worth, that he owed the corporation for, was to be wiped out at the same time, wasn't it?

A. I believe that was a part of the proposition.

Q. So that he was not going to pay more than—

A. Fifty per cent.

Q. He was going to pay $2,500 for stock worth $7,500?

A. I have not figured that out. He was to pay 50 per cent provided the obligations of the corporation were eliminated.

Q. Fifty cents for the capital stock?

A. Fifty cents on the capital stock. [46]

Testimony of William F. Elliott, for the Trustee.

WILLIAM F. ELLIOTT, a witness on behalf of the Trustee.

Direct Examination.

(By Mr. ANDERSON.)

I was one of the original incorporators and secretary-treasurer and manager, of the Elliott-O'Brien Company, Mr. E. M. O'Brien was formerly its president; and, after his death, his brother, C. H. O'Brien, was president.

Prior to the incorporation of the company, both of the O'Briens and I had been in the employ of Carson, Pirie, Scott & Co. E. M. O'Brien was in the employ of Carson, Pirie, Scott & Company after the formation of this company in 1917, and C. H. O'Brien is still employed by them—has been, for possibly 30 years. I have been with them this

(Testimony of William F. Elliott.)

last time for about six months, since the first of May, and was with them for about ten years before the organization of this company.

I was with the Elliott-O'Brien Company during the whole time it was operating at Chehalis, from 1917 until late in April, 1921.

E. M. O'Brien died in December, 1918.

His brother, Ed. O'Brien, was not active in the business at Chehalis until about six months ago, about October, 1921. He didn't do anything right there, in Chehalis, he simply,—in a way he controlled all of my stock—he had nothing at all to do so far as the bankrupt's business was concerned. He did not come there (to Chehalis) in October—was not active—simply came to Chehalis every thirty days, possibly part of the day—his home was Chicago—would go through here—had nothing to do with Carson-Pirie-Scott's branch office in Seattle. He went to Bermuda about January, 1921—told me he was sending Mr. LeSourd a Power of Attorney and that I was to consult Mr. LeSourd in connection with the business.

Mr. C. H. O'Brien dictated the policy of the business during the [47] fall of 1920, while in Chicago, and for about a month or six weeks after coming here in October. He then went to California from here. I was then secretary of the company—resigned on April 22d, 1921—was succeeded by Mr. Hart, who had become connected with the bankrupt company sometime in November.

Hart's connection with the store came about in

(Testimony of William F. Elliott.)

this way: I had a big sale on. Mr. O'Brien thought I was worked a little too hard and felt I ought to have some one down there to assist me; and so he suggested that I have Mr. Hart come down and help me. Mr. Hart came down and was at Chehalis from November until the first of February, the first time. Then Mr. O'Brien wrote Hart that he did not see any reason why he should be there any longer, and to come back to Seattle. Mr. Hart next became connected with the company sometime in February, 1921. I was getting ready for another sale and wrote Hart that I would like to have him come down and help me again. He stayed until after I left.

Hart came the first time at Mr. O'Brien's request. The last time I asked him myself.

There were no arrangements made in November, 1920, about handling the indebtedness of the company, except that I had a sale on during November and we were supposed to put the pressure on a little stronger and see if we could not reduce the indebtedness by the first of January; and then of course we always expected to reduce stock quite a good deal in the January sales.

It is not unusual to put on a special sale during the fall months. Meir and Frank, the largest retail dealers, have had a sale on since a year ago last January without a stop.

I left Chehalis on April 25th—went to Seattle and saw the Carson-Pirie-Scott representative, then went on to Chicago, taking employment with Car-

(Testimony of William F. Elliott.)

son-Pirie-Scott & Co. I first arranged to go with them early in April, 1921—arranged by correspondence—asked for a position with the company. I first wrote asking for a [48] position in the latter part of March or early in April. At that time (on leaving Chehalis) I went to see one of the officers of the company in the State of Washington—

I sought a position with Carson-Pirie-Scott in March simply because Mr. O'Brien and I had a great many differences for four or five months; and I felt that, as he had control of the stock, I had nothing whatever to do in regard to the business. I nominally owned half of the stock. On the other hand, he had every bit of it as security for personal loan. I was really not connected with the business except as manager in name only, though I had been connected with it since its incorporation.

I had been advertising the business for sale in the "Seattle Times" and the "Oregonian" early in the year—am not just sure whether January was the month—1921. I got in touch with different men with a view to selling the store during February and March, 1921.

Q. You had come to the conclusion as early as 1920, that this business was a losing proposition, and the best thing to do was to liquidate for the benefit of creditors and for the stockholders?

A. No.

Q. What was the earliest date that the bankrupt concern decided to sell out and quit business?

(Testimony of William F. Elliott.)

Mr. McCLURE.—I object to that, nothing in the record to show that they did decide.

The COURT.—He may answer the question. Exception allowed.

A. I will say sometime during January. I might qualify that by saying I had nothing to do with the decision whatever, finally; that Mr. O'Brien simply decided. We had other arrangements on, he and myself personally; he absolutely ignored (these arrangements) and had taken it (the business) over himself—had planned to give up the company's affairs in Chehalis, that is one of the reasons why I felt [49] I could quit at any time. He had taken the policy of the business absolutely out of my hands.

Mr. O'Brien notified me of this decision in January, 1921. He wrote me that he was going away on an extended trip and was turning the notes I owed him over to Mr. LeSourd for collection. As I understood, he had instructed Mr. LeSourd to look to the closing of the business.

After January 1st, I exchanged a few letters with different prospective buyers for the store; they did not amount to anything except one from Mr. Bach. He wrote me in February. Mr. Mottman of Olympia wrote us after I got the letter from Mr. Bach, I think, and I also dealt with Mr. Worth of Albany who came up to see me in Chehalis in March, I think. Also I had a couple of answers to my advertisement but nothing came of the latter; I do not think I advertised the business in the Chehalis

(Testimony of William F. Elliott.)

papers—didn't endeavor to make a sale through any merchant—

Q. Did you advise Carson, Pirie, Scott & Co. of your decision to sell out in bulk?

A. I think I possibly wrote to Mr. Davis and told him about the store.

Mr. Davis is the attorney representing Carson, Pirie, Scott & Company in Chicago—has an office with them. I have no copies of those letters—and reply letters received from Carson, Pirie, Scott & Co.—I haven't any personally, though I might have some of the originals in my trunk in Spokane, some of the important letters I possibly kept—I have some of the correspondence in Spokane and will forward those letters to the Referee upon returning to Spokane—can do so within thirty days.

The bankrupt concern had a correspondence file at Chehalis in which they kept the letters they received. That file was there when I left, in a folder.

I did not talk with any representatives of Carson-Pirie-Scott [50] about the affairs of this company during 1921—not that I know of. When I left Chehalis I saw their representative in Seattle—about my new position, didn't talk to him about the affairs of the company.

Q. Was this representative at Chehalis at different times during the spring?

A. He came to see me regarding the position sometime during April; in passing through he stopped off.

I kept the books of the company.

(Testimony of William F. Elliott.)

I came here to this trial at the request of Mr. Woodley, representing Carson, Pirie, Scott & Co.

I kept the trial balance books shown me (marked Trustee's Exhibit "B" for identification).

Q. Referring to page 4 of the trial balance (book) will you tell the Court the amount of the past due indebtedness for January.

Mr. McCLURE.—The book speaks for itself; it does not need any interpretation.

The COURT.—He may explain. Exception allowed.

January 1st, merchandise indebtedness past due, $3,970.68; merchandise indebtedness not due, $7,-108.15.

On January 1st, 1921, I would say we owed the Bank $5,500.00, that is in another book. That was on demand; I do not know whether that was past due or not. On December 31, 1920, we owed the Bank $5,500.00; that indebtedness was incurred before 1918 — it was carried for three years. Of course, we had a great deal more than that at different times in the Bank. On January 1st, we simply made out new notes; these were not renewal notes. Those others were on demand and we made out three ninety-day notes for $2,500.00, $2,000.00 and $1,000.00.

Q. So that was not past due?

A. No, that was not past due.

Mr. HULL.—Except on demand. [51]

A. They never demanded it, except that they thought that we should make out a new note so we

(Testimony of William F. Elliott.)

simply made out the new notes and made them for ninety days, three notes, ninety days.

Our "past due" and "not due" merchandise indebtedness was:

1921.	Past Due.	Not Due.	Total.
January 1st	$3,970.68	$7,108.15	(11,078.83)
February 1st	3,446.14	9,291.31	12,727.53
March 1st	4,788.79	9,527.45	14,316.24
April 1st	8,693.19	3,923.42	12,616.61

That is as far as my book went (was kept); I left about May 1st, the date of the last entry would be April 1st.

On April 1st our indebtedness to the Bank was $5,500.00. At that time our account was overdrawn at the bank $309.99 overdrawn. This was really "kiting" a check. We had sent the checks back to New York and they had not come back yet; we were not really overdrawn. According to the statement, we possibly had $1,000 in the bank, but we might have had $1,300 in checks out, the Bank did not know we were overdrawn, of course. It did not appear on their books. I had put that down to bring my own cash balance up.

Our sales were as follows:

During January	$6,026.99
During February	4,636.94
During March	4,417.19
During April	8,877.46

Q. These books show the correct condition of your books (business) so far as they go?

A. No, this "stock" is simply an estimate. We

(Testimony of William F. Elliott.)

took an inventory of it the first of January. Of course then the merchandise would show correctly. February 1st we made an estimate of the gross receipts and net profits. The same thing for March and April. That was an estimate of what we had on hand. [52]

Except for the "stock" account and the "net worth," the rest of the figures here are actual. We used an estimate to find our "net worth." The "sales" are correct. In estimating the "stock," I made a reduction of 30% or 25%—reduced it comparitively.

The book shows the amount of goods we bought each month, also the amount we sold each month.

Our purchases were:

January	$2,580.16
February	3,274.15
March	4,478.35
April	249.84

As shown at pages 5 and 6 of the Trial Balance Book, our total expenses were:

January	$2,396.78
February	1,548.49
March	1,583.84
April	2,806.29

(Trial Balance Book received in evidence, marked Trustee's Exhibit "B.")

Carson, Pirie, Scott & Company was our principal creditor during 1917 to 1920—

Q. What was the most you owed Carson, Pirie, Scott & Company during 1920?

(Testimony of William F. Elliott.)

A. I could tell by our books. I think about $16,000.

Q. Can you refer to your books to show that?

A. It will have to be added up.

Mr. McCLURE.—I object to that as immaterial, any transaction in 1920.

Mr. ANDERSON.—I stated the trustee would show that up to the first of January this was known as the Carson-Pirie-Scott store, for the reason that Carson, Pirie, Scott & Company sold them the greater part of their account, that is merchandise. After January first, Carson-Pirie-Scott refused them credit, in fact; and then they began to buy from other creditors whose accounts are represented by the trustee. [53]

The COURT.—You may show that. EXCEPTION allowed.

WITNESS.—There are some records somewhere where I have written Mr. Davis calling for a statement showing the amount we owed; but otherwise my books do not show the amount I owed the large creditors. They show by the month, and I went through and picked Carson-Pirie-Scott Company's out of each month and added them together. About June, 1920, I think we owed them $16,000.

(Statement of Carson, Pirie, Scott & Co.'s account, dated Chicago, 7-19-21, was stipulated by counsel to be a correct statement of the indebtedness, amount $6,590.47, due it from the Elliott-O'Brien Company on January 1, 1921, and of the debits and credits from that date down to the time

(Testimony of William F. Elliott.)

the bankruptcy claim was filed—the final balance being $2,962.18—was received in evidence and marked Trustee's Exhibit "C.")

I will explain the method in which I kept the Elliott-O'Brien Company's books: We started off with our invoices at two seasons of the year, spring and fall, indicating these seasons on our books by the letters "S" and "F." Spring started on February 1st and ended June 30th and fall started July 1st and ended January 31st. We did not take inventory until February 1st. So starting with the invoices that come in the first of January or say the first of February, they will be our first Spring invoices. We marked them "S" and indicate the year by letters—"A" for 1916, "B" for 1917, "C" for 1918, "D" for 1919, "E" for 1920, and "F" for 1921, this year being our sixth year in business; as the invoices came in I would mark it (to show the season)—for instance, this one (marked "S" "F") was spring 1921—and then I would enter the amounts in the invoice book (marked Trustee's Exhibit "F"), and afterwards in our distribution book. I might illustrate by showing the entries in the invoice book, and then take it (the entries) from that (the invoice book) into my other book (the distribution book). [54]

Here is an invoice we received the 29th of January. I received it in February, it was spring merchandise. I entered the month and date of the invoice (in the invoice book). (There were three different departments,—dry-goods, indicated by

(Testimony of William F. Elliott.)

"D," Clothing indicated by "C," etc.) I then entered the amount of cash discount, 2% in this instance, then the date when due, then the date when paid, then the date when received, then the amount paid, also entering any credits. The amount paid with the credits and the discount would make the total (entered) here; that would be the balance.

When the invoice came in I first checked it over and then put down on the foot of the invoice the department and when it was due and also the date when it (the goods) was received.

Then at the end of the month I would simply take a statement of the total amount I had received.

Now, I can go back further—when we made a check for my department "D" that was entered; where it was due in March, for instance, I entered it there, the date it was due in March, and so on, and I put the number of the invoice here, and whether it was net, or 2%, or something else.

At the end of every month, then, I would balance my book, take off my totals, and transfer them over here into the grand total (illustrating). Here is January 31st: Now, I would come back here (indicating) and find out what is past due. These were all past due (indicating). I would pay them. When I did pay them I would draw a line through them; for instance, here is one on regular terms, 2% ten days, sixty extra; that means that at the end of 70 days I can take this 2% discount.

Carson, Pirie, Scott & Company, Fleischner, Mayer & Co. Marshall-Field and a lot of other

(Testimony of William F. Elliott.)

wholesale houses would give you 60 days in addition to this 60. They not only give you 10 days, they give you 60 and another 60, making 120 days. That invoice is net due at that time. Most of my invoices were delivered, I would say, last [55] October or November, and every discount was taken, including Fleischner-Mayer, Western Dry Goods and every other concern (except Carson, Pirie, Scott & Company). I paid them when due and took the discounts. With Carson, Pirie, Scott & Co.'s invoices, instead of taking the discount at the end of 70 days, I would make it (i. e., treated them as) net at the end of 120 days. If they shipped in January I had until April to pay.

So that the Carson-Pirie-Scott account here (i. e., referring to the statements, afterwards introduced as Trustee's Exhibit "D") shows that I am past due on the amount then due. There is no discount on them. They are supposed to be paid on that date. On these others (i. e., referring to invoices from other concerns) you will see a discount on nearly every one of them.

I cannot say that I paid the invoices at the end of 120 days. If I could possibly do so I would, but the trouble is that we could not do it. I would take all of my other discounts and the Carson-Pirie-Scott Company would have to come in when we could get it, which was usually when the others were all paid.

We bought a lot of merchandise from Carson, Pirie, Scott & Co. and it did not make any difference

(Testimony of William F. Elliott.)

with them. They wanted their bills paid—did not care for the 120 days—wanted us to pay in 70 days, their regular terms. Their invoices called for that, but we were entitled to 120 days.

We purchased approximately 75% of our dry-goods from Carson, Pirie, Scott & Co. (a bunch of statements rendered by Carson-Pirie, commencing September 8, 1920, and going down to April 4, 1921 (Test., page 47) were received in evidence, marked Trustee's Exhibit "D"). . . . .

The pencil notations on these invoices (referring to Trustee's Exhibit "D") are all mine. The notations merely refer to the time when certain of the invoices were paid. I made a note of this on the invoices as well as on my check-book and checked off the invoices [56] according to the invoice book. There were at least three entries. This (i. e., the pencil notations) is not official at all, I simply made a little memorandum on her (i. e., on the invoices).

Carson, Pirie, Scott & Company charged me no interest until I sent my check in with the invoices; if interest was due they would immediately return it (i. e., the invoice) and charge me interest for the overtime up to the time they got my check. The interest was figured from the expiration of the 120 days. If I paid at the end of 150 days, I would be charged with 30 days' interest.

These money items have all been summarized and written into my trial balance, showing merchandise received, past due, etc. Everything is in

(Testimony of William F. Elliott.)

the trial balance except the bank account, which I kept in the ledger account.

I note from Trustee's Exhibit "C" that Carson, Pirie, Scott & Co. sold us $560.50 worth of merchandise on January 1st; they did not refuse us credit until after January 1st. It was some time in February when they refused to ship us any more merchandise until we paid our past due bills. We owed them not only 120 days, but we owed them back for about 240 days—six months back—and they wanted us to clear up our past due indebtedness before they extended us any more credit.

The COURT.—They wanted to get back to the 120 days.

A. I think it was February. We wanted to buy our spring merchandise and they refused to ship it to us unless we would pay more on our past due bills. Of course, they simply felt we had always been taking our discounts with other firms and they wanted to be treated the same as the other firms.

Q. Referring to the statement dated 12-3-20 in Trustee's Exhibit "D," you have been charged here 253 days' interest?

A. That was the average time, yes. [57]

Q. And that is 253 days, plus 120 days from the date of purchase? A. Oh, yes.

Q. Which would make over a year's time?

A. Yes, some of these bills were really a year past due—at least eight months past due, making a year's time.

The matter of our account with the Carson, Pirie,

(Testimony of William F. Elliott.)

Scott & Company was brought up in a conversation with Mr. O'Brien when he was here in November, 1920—to the effect that we ought to simply wipe our past due indebtedness off—that Carson, Pirie, Scott & Co. wanted to be treated the same as any other wholesalers—that while we were taking discounts with other concerns, we were letting them go and not paying them at all—not paying them net even—that they did not like that very well.

Mr. O'Brien was not then in the field for Carson, Pirie, Scott & Co. in reference to their Western accounts—had nothing to do with that whatever. At that time he was not working for Carson, Pirie, Scott & Co. He had been pensioned for a year and a half. He had nothing to do with Carson, Pirie, Scott & Company whatever—not for two years. He is not working at all, simply out enjoying himself. He has been with the Carson, Pirie, Scott & Company for thirty years and he has been pensioned.

I did not take up with Mr. O'Brien the matter of getting further goods from Carson, Pirie, Scott & Co. I might have written him simply, or he may have written me simply, that Carson, Pirie, Scott & Company would not ship us any more goods—in November and December. This was not in November. We got goods after that. It was really in January or February. I do not think Mr. O'Brien took this matter up with Carson, Pirie, Scott & Co. He took it up with me.

He said I simply ought to pay the indebtedness

(Testimony of William F. Elliott.)

and not buy any more goods, simply have our sale and cut our merchandise down and then we would be in position to buy more goods, but not to buy any more from Carson, Pirie, Scott & Company until we had paid up.

Q. Didn't you tell me when you were in Seattle about a month or so [58] ago, you *were ceased* buying from Carson, Pirie, Scott & Co. and were going out and buying from other creditors?

Mr. McCLURE.—He is trying to impeach his own witness and not laying the foundation; but it is not proper anyway because he is his own witness.

The COURT.—You may ask about any conversation you had with him. He was an officer of the company.

A. Mr. O'Brien never said anything regarding that at all; he said not to buy goods anywhere; he wanted us to reduce our stock down and pay our bills, particularly the past due bills which would come first.

We conducted special sales in 1921, commencing about January 1st—kept them going during February, March and April, making the same effort in April that we did in January and even in December—store covered with red signs advertising special sales during these months—town filled with posters—windows marked with cards—brought up a man from Portland to put on a special sale for us in April—filled the town with special advertising for the sale. The man from Portland simply stirred

(Testimony of William F. Elliott.)

things up a little bit. We had been running for three or four months and we thought it was a good idea to get some new blood in. He got out 7,000 circulars—mailed some—covered Centralia and Chehalis with circulars by boys, gave special inducements on merchandise to get the people to buy. He really did the same things we had done before, only we had a new man to do it.

Our notes to the Bank fell due on April 1st in the amount of $5,500.00 and we had $8,693.19 of past due merchandise indebtedness on April 1st, at which time we were overdrawn $309.09 at the Bank according to our records, though the Bank's records did not show that. We had lots of checks out at that time, it would take them ten days to go to New York and back; and we were then, what is in banking terms, "kiting" checks.

Q. But these amounts which we have referred to here as being past due and not due, and indebtedness to the bank, were all over and above [59] anything that might be represented by checks outstanding?

Mr. McCLURE.—I object to the counsel testifying; let the witness testify.

Q. What are the facts?

The COURT.—He may answer the question.

A. Well, as I say, if the bill was paid, of course it would show in there, of course I would have to balance my books and then take our balance. The total amount we owed here would be included in that.

In reality if all of the outstanding checks had

(Testimony of William F. Elliott.)

come back on April 1st, we would not have had any money in the bank on April 1st to meet our past due indebtedness represented by the sum of $8693.19.

It was right around that date, April 1st, that I wrote Carson, Pirie, Scott & Co. asking for a position with them; it might have been the last week in March or the first week in April; I planned to go with Carson, Pirie, Scott & Co. at that time.

Besides our merchandise on hand, we had fixtures, which represented about $4,000.00 and our accounts of about $1,000.00 to $1500.00 as resources out of which to meet the obligations that had fallen due.

When our notes fell due at the Bank, I did not sign renewals. They called me over there and said I ought to do something about those notes—they merely stated that I had been paying other concerns, taking discounts, and they thought that we should treat them in the same way. We had been running that $5,500.00 account for three years, ever since we opened up. We had paid all other accounts and not paid them one cent, which was very true, and I promised that at that time that we would do what I could for them. I cannot say that they asked me for a statement of my indebtedness—I do not think they did—do not remember of telling them what our indebtedness was on April 1st. I simply told them I felt we had not been treating them right and would do the very best I could for them.

(Testimony of William F. Elliott.)

Q. What did they demand of you in the way of payment? [60]

A. Well, they simply stated that they had ought to get at least—I cannot remember now; might have been a thousand dollars a week. Of course that looked easy, in a way, because we were going to have a big sale and easy to meet a thousand dollars a week. I thought that was very lenient, personally.

The results of this sale, according to the sales-book, were:

First two days	$1,401.76
The next week	1,764.95
The next week	1,964.95
The next week	2,718.68
Last three days	1,119.62

The last item is not my figures—presume it is correct—appears to be (entered) April 27—I left on April 27th, Wednesday night—left the sales so that they could be entered—that winds up the book. The total sales for that month (April) were $8,-968.99, and expenses up to April 26th were $2,-896.29, leaving $6,071.17 for disbursements. I cannot tell to whom that money was paid, without referring to my check-book stubs or the cancelled checks (These were not available at the hearing)—can tell how much paid out for merchandise, but not to whom, unless I check up my bank-book.

The COURT.—This sale you were running in April, were you running off new goods, or old goods?

(Testimony of William F. Elliott.)

A. Running off both—early in the season—had a lot of domestics, good almost any time, some spring goods, and some spring goods carried over from the season before. The Summer season had not started at all; it was April, and quite rainy.

Q. Were you selling at a loss, actual loss for each sale?

A. A fairly good profit on some of the goods—sold the new goods at a profit—made a profit on the oldest stuff, on what we took it in at—lots of merchandise we sloughed off—pretty hard to tell how the April business came out, because we hadn't taken an inventory since January first, leaving four months in there. [61]

Mr. ANDERSON.—So that it may go in the record, here: Trustee's Exhibit "C" shows that Carson, Pirie, Scott & Co. were paid $1,598.13 during April.

I paid off our $2,500.00 note at the bank in April—not sure whether I paid the $1,000.00 note to the bank, or whether Hart did, after I left—think entries were made in here, telling all that.

Mr. ANDERSON.—The proof of claim in bankruptcy shows that on May 5th the balance in the bank, $143.08, was applied on that $1,000.00 note, the note then being past due.

As to bank making demand upon me for payment, after April first—as I stated, they called me over and stated they ought to receive some payments on these notes. I told them we would do the very best we could, we were getting ready

(Testimony of William F. Elliott.)

for another sale and I thought they were entitled to some payments.

Q. Did the bank state to you that they must be paid at the rate of $1,000.00 a week?

Mr. HULL.—I object to that; that is incompetent.

The COURT.—He may answer; exception allowed.

A. They simply stated they would like me to pay at the rate of $1000.00.

I was not at all apprehensive as early as April eighth that some creditors would step in and close us up—do not know anything about Hart's idea; but I did not feel that way at all myself.

I was there as manager for Mr. O'Brien, in a way—but had no interest, as I have stated, after Mr. O'Brien took the business (policy) out of my hands—I held $7,500 of stock, not yet paid for—up as collateral.

As to basis of taking inventory on January 1, 1921:—as near as I could at market value—went through everything—were very careful in taking our inventory—(had) made an estimate—the inventory (when taken) ran 25 to 27 hundred dollars over my estimate—so sat down and took the inventory sheets and reduced all the different things and took another $2,500.00 off the inventory, because I was satisfied that it would show our net worth was $14,500.00 and I could not afford [62] to do that—so wrote off that amount from the original invoice sheets when I went through them page by page, making deductions on different

(Testimony of William F. Elliott.)

things. So that, when completed, the inventory was really placed at the market value. Had had so many sales that our merchandise was in very good shape—the old stuff had been gotten rid of—I had been keeping my stock up—and it was a going concern—the stock was "right up to the minute."

I took the inventory on April 23d on exactly the same basis as before, only did not go over it again and mark it down but took it at what I thought was the market price. Our numerous sales had cleaned up the high price goods, and our spring merchandise was worth what we paid for it.

Our indebtedness for merchandise, from November, 1920, to the last of April, 1921, as shown by this book, was:

Nov. 30th	$16,069.95
Dec. 31st	12,958.01
Jan. 31st	11,078.83
Feb. 28th	12,727.53
Mar. 31st	14,316.24
April 26th	12,616.61

There might be a few changes in the last item, April 26th, after I left; Mr. Hart paid a few bills after I left. That reduced our indebtedness from $16,000 down to $12,000.

Q. On December 31, you owed for merchandise $12,958; and on April 26th you owed $12,616, a difference of $300?

A. Wait a minute. April, $12,616.

Q. Yes.

Q. On December 30?

(Testimony of William F. Elliott.)

A. December 30th, merchandise $12,958.

Oh, that is merchandise not due, only merchandise not due; that is not the total.

Q. What is the total?

A. $16,240.92, on December 31st.

The paper now handed me—I would say that is a correct copy (Test., p. 69). [63]

Officially we always took inventory on February first; but this last year we took it in December.

According to our statement dated December 31, 1920, our net worth was $14,230. I would say that we lost $12,000 between January 1st and April 26th. At the end, it simply showed that we got our cost out of the merchandise, and that we had lost what it cost us to do business for that four months, which was $10,000 to $11,000. . . . . In April it ran up. We had an outside man, and while we increased our sales, it cost a lot of money to do it.

Mr. ANDERSON.—That is all.

Cross-examination.

(By Mr. McCLURE.)

This corporation had a capital stock of $15,000, of which Ed. O'Brien and I each owned half—75 shares each. Both of us paid cash for the stock. I put in $3,000 of my own money and $4,500 which I borrowed from the O'Briens.

I conducted the business; neither of the O'Briens took any active part in it.

I paid 8% interest on these loans—received a salary of $150 a month originally, then $200 and $250 for the last six months. Had to pay interest

(Testimony of William F. Elliott.)
and living expenses out of my salary.

That is the explanation of the difficulties that arose between Charlie O'Brien and myself after Ed's death. Charles O'Brien was anxious to get out his own money, and that of the Ed. O'Brien estate. He thought we had too big a stock—was wanting me to pay the debts promptly, and cash in his stock investment. I had always figured that I could possibly take his interest over some time. Of course I wished to do that.

That was what we were talking about in November, 1920, when we met, in Seattle, with Mr. LeSourd. I made the proposition then—also in the Washington Hotel the next day. He simply stated that he [64] would cancel the notes I owed him —of course, he had the E. M. O'Brien notes as well. I owed the $4,500.00—he would cancel those. There happened to be a gentleman present who was out here looking after some special sales for Carson-Pirie-Scott, and Mr. O'Brien had him up there at the hotel. We went over the matter very carefully. Mr. O'Brien agreed he would sign an agreement to cancel those notes. I figured that I would pay him $140 a month, or 8% interest for three years, and buy their interest in the business in three years, he to cancel my indebtedness to him. I would then have my own indebtedness to him paid off. I figured I could buy their interest in the business at any price I wished. They wanted to get out of it.

At that time we owed Carson-Pirie-Scott quite a lot of money.

(Testimony of William F. Elliott.)

Q. C. H. O'Brien was not interviewed about the Carson-Pirie-Scott indebtedness in November?

A. Not particularly. He mentioned that with the other indebtedness; the thing was to get the indebtedness paid off. Of course the Carson-Pirie-Scott indebtedness was the largest part of it, and was long past due. Nothing else was past due. We did not owe a dollar (of past-due indebtedness except to Carson, Pirie, Scott & Co.) Our statement will show that in November, December and January there was nothing else past due; everything was up in shape. Everything was paid in January and everything was paid in February and we did not owe anybody. Nobody was wanting their money. Carson-Pirie-Scott did not have to have that money; and we did not have to pay them. We took advantage of all our discounts that came along, except the Carson-Pirie-Scott Company.

Q. And how did that happen to be in that condition?

A. We always had a standing account with them.

Q. They always had a substantial claim against the Elliott-O'Brien Company?

A. Oh, yes; they always had a big claim,—a substantial account with them ever since we began business—which had been past due.

Q. There was nothing unusual about that past due claim then? [65]

A. Not after the first six months we were in business.

(Testimony of William F. Elliott.)

Q. In your other debts, except the bank, business, you kept up?

A. Absolutely. Of course I might make an exception, in those last months, January, February and March, we could not take care of our indebtedness, as our books will show, and then we owed two other accounts besides Carson-Pirie-Scott, that is, Fleischner Mayer and Western Dry Goods Company, but nobody else. That was in March.

Q. Those were current accounts?

A. Not during March.

I would not say that those accounts were for goods purchased in 1921. It would be possible some were purchased in December.

Q. What did their claims amount to?

A. Well, the total past-due in March was $3,000 —the total among the three of them—

Mr. ANDERSON.—I can tell you what it was; the Western Dry Goods was $904.66.

WITNESS.—That was due with discount. When the Western Dry Goods Company accounts fell due, we took our discounts until in March, as the statement shows here. That was the first month we let the Western Dry Goods Company go past due, also the first time we let Fleischner-Mayer Company go past due. That was the March statement. There were three concerns then, we owed in March.

Mr. Beamer, the representative of the Western Dry Goods Company came down to see us in March, or maybe early in April, sometime in there—came

(Testimony of William F. Elliott.)

in and wanted to know how we were getting along. He and Mr. Hart and myself talked the matter over. He wanted to know how we were coming out. I said, "Look at the merchandise we have. We have not taken an inventory since the first of the year; but I think we are running even. I think we are coming out even"—I meant that I figured that we really were making enough profit to pay our expenses. It proved afterwards that we did not do it, but I figured we were doing it. And he said, "Well, these bills were past due in March, when are [66] you going to take care of the account?" I said, "We will put on a sale in April and I think we will take care of everybody."

It appears that was satisfactory to Mr. Beamer; he made no objections to it—none at all—expressed his satisfaction.

Explaining the reason for my seeking a new position with Carson, Pirie, Scott & Co.;—I simply felt this way: I really had it up with Mr. LeSourd last November whether I should look for another position. He said, "No, you ought to stay. Mr. O'Brien has treated you nicely, you ought to stay with him," and so at last in March—this position was open the first of January—but along toward the latter part of March or the first of April, Mr. Hart had been there and I thought, "Well, I am married, I haven't got a cent, this position is open, it has good possibilities,"—that had been my firm before and I liked them and they seemed to be interested in me and they said they would not do

(Testimony of William F. Elliott.)

anything unless I had the consent of Mr. O'Brien to leave. They would not take Mr. LeSourd's word, but they wrote to Mr. O'Brien to see if he was willing that I should leave—and finally in the latter part of April I left and took the position, with Mr. LeSourd's consent.

I abandoned the idea of acquiring the Elliott-O'Brien business and operating it myself sometime during January when Mr. O'Brien wrote me he was sending my notes to Mr. LeSourd for collection and told me that I should pay them by the month or any way I could; that he was leaving on an extended trip;—I simply felt then there was nothing more to do—that Mr. O'Brien had repudiated his promises to me and I was out of it—his promise to permit me to pay off my indebtedness to him in three years. I felt he had taken it out of my hands and I resented it.

At no time, up to the time I left in April, 1921, was any creditor of the Elliott-O'Brien Company seeking to enforce its claim by law.

Q. What about the goodwill of this concern?

A. Well, of course it might be possible that it might appear to me [67] worth a little more than to anybody else; but I could have fifty witnesses from Chehalis come up here and state what kind of a store it is; that it was the best store in town. We had the highest class everything and we had the best line of business—a good location and I had felt that Mr. O'Brien was taking the wrong time to try to sell out. They were trying to

(Testimony of William F. Elliott.)

get one hundred cents on the dollar. In negotiating with Mr. Worth, Mr. LeSourd held out for one hundred cents on the dollar for the stock, including the goodwill, and the deal did not go through because he wanted the one hundred cents, I believe it was absolutely worth one hundred cents on the dollar at that time.

Q. In fact you considered the stock was worth par?

A. Yes, for our merchandise stock was worth $14,000.

The bottom had simply fallen out of business in January and during the spring of 1921, not only in Chehalis but everywhere. Values were down and there was not any business. We put in as much advertising in January as we did in December and the sales will show,—our sales in January were approximately $6,000, while in December they were a little over $16,000. We had put forth the same effort in January as we did in December. There was absolutely no business. That slump continued and business was very quiet when I left. Of course our merchandise was really receding every month.

Q. Your suggestion of a payment of $1,000 per week was rather the suggestion which the bank made to you, than that you made to the bank, wasn't it, to pay $1,000 a week?

A. I did not think there was any question about it. I thought a $1,000 would be very easy. I thought we ought to get $500 or $600 a day. I

(Testimony of William F. Elliott.)

think Mr. Hart and I agreed that we ought to get $500 a day out of it—the bank was very friendly—no desire to embarrass us at any time, nor at all—I thought $1,000 a week was very lenient—two days of our sales a week—$500 a day, or $1,000 for two days.

This special salesman from Portland made no guarantee as to what [68] he could accomplish, but figured on selling at least $15,000 in April with the stock we had. We had done $16,000 in December and he figured he could do at least $15,000 during April.

Q. What was the condition of the stock at that time with respect to lines being broken?

A. The first of April the stock was absolutely perfect.

Q. In good condition?

A. Absolutely filled in, there was not a hole in the place. It had gone down gradually and we kept filling in.

The explanation of the failure of the April sale to meet expectations is that the public's ability to absorb merchandise had been exhausted. They could not take any more—also the weather was against us—rain all during April, every day.

(The two books previously identified and used by the witness in his testimony were received in evidence, viz: Invoice record as Trustee's Exhibit "F"; Ledger as Trustee's Exhibit "E.")

(Testimony of William F. Elliott.)

Cross-examination.

(By Mr. HULL.)

I was contemplating buying the Elliott-O'Brien store shortly before I left, and this last fall.

Q. You testified a minute ago it was in January. Didn't you also negotiate during the months of March and April, weren't you planning on it?

A. Yes, I had been planning on it; I had written Mr. O'Brien a couple of letters offering to buy the store at a certain price and we could not agree. He wanted cash and I wanted time. (Admitted by counsel that the bank loaned the Elliott-O'Brien Company $500 in January.)

Q. And in March they loaned you additional money?

A. January 13th they let me have $500 and I paid that off and on the 22d I got another $500.

Q. And in March?

A. March $300.

Q. So that they loaned you some money after the first of March? [69]

A. Yes.

Q. Did the bank intimate anything to you about their knowledge of trouble between you and Charles O'Brien?

A. Oh, I had that matter up with them once or twice at different times and they possibly knew we had a little trouble personally.

Redirect Examination.

(By Mr. ANDERSON.)

I think I told the bank I was going East, at the

(Testimony of William F. Elliott.)

time I got the position, about the first of April—wouldn't be sure—do not think I got it until April 20th, something like that—didn't get the position the first week in April, as I remember.

Q. What in your opinion is the goodwill of the business that has lost $12,000 in the last four months?

A. Well, I would say that while we lost money, that did not affect the goodwill of the business. We had been four years and a half there; and four months losing money did not affect the goodwill; in fact, during that four months many people had come to the store who had not been there before, and they would continue to come.

Q. Now under the circumstances in this case in the demoralized condition of the business at Chehalis, would you say that any business had a goodwill value?

A. I would say that any business that had been successful.

Q. Take this business you were conducting in Chehalis in the spring of 1921, making various efforts to sell out and find a buyer, and having had the experience you had there with buyers, would you say that the business had any goodwill?

A. I do not think whether we had many buyers or not would affect the goodwill, because we chose a bad time to look for buyers. The goodwill could not be affected adversely by the sales we had in the four months. The more we did to get people to that store the better it would be for our successor.

[70]

(Testimony of William F. Elliott.)

I expect I notified the Bank, as soon as I found out I was going to leave. The Bank is across the street—I do not remember—no I did not make any special trip over there to tell them, that I remember of—went to the bank every day, but had nothing to do with Mr. Coffman—was simply making my deposits with the teller—didn't tell him anything, of course.

It is not a fact that the bank took a determined stand and told me I had to cancel our indebtedness at the rate of $1,000 a week.

Q. Refresh your recollection by reading your letter dated March 28th to Mr. LeSourd and tell us when you received your position or offer of a position with Carson, Pirie, Scott & Company.

A. This was not the acceptance of the position. They wrote me they would not accept until they got into communication with Mr. O'Brien.

Q. Didn't they send you a telegram on March 28th making you an offer of the position?

A. Yes, but I think everything was based on Mr. O'Brien.

I could not tell when I first knew that I was going with Carson-Pirie-Scott, until I could see the letter —we exchanged quite a few letters before the thing was finally settled—would say around the 15th of April. (The letters, originals and copies, previously identified by the witness LeSourd were received in evidence and marked Trustee's Exhibit "A.")

(Witness excused.) [71]

Testimony of D. G. Abel, for the Trustee.

D. G. ABEL, a witness on behalf of the trustee.

Direct Examination.

(By Mr. ANDERSON.)

I acted as attorney for the bankrupt prior to the bankruptcy—practice law at Chehalis—the application for a receiver in the State Court for Lewis County was made by the Bee-Nuggett Publishing Company on April 7th, 1921—we filed our answers the same day and the State Court appointed the receiver, George R. Walker on May 7th, who immediately qualified.

Prior to this application for a receiver, I went to Seattle, on the 3d day of May, I think—received a letter from Mr. LeSourd on that date and immediately went to Seattle and took the matter up with the creditors—told them that Mr. Elliott had gone, that Mr. Hart was alone in charge and did not want to remain, that he had no interest in the Company, that the sales at that time, during Monday and Tuesday, of that week, had fallen off considerably and that unless action was taken at once there would be a further loss.

When Mr. Hart came down to Chehalis the second time he was elected as one of the officers—I was not at that meeting—was out of town—think Mr. LeSourd was down there—think it was contemplated that Mr. Elliott would leave and Mr. Hart would stay in charge as long as necessary—the first information I had of that meeting was a letter re-

(Testimony of D. G. Abel.)

ceived from Mr. LeSourd, dated probably the first day of May.

Q. Can you tell from memory when it was that Mr. Elliott made his connections with the Carson-Pirie-Scott Company, how long before this meeting of February 23d was held?

A. The first talk I had with Mr. Elliott was within two days after I received a letter from Mr. LeSourd, dated April 8th.

That conversation was in part about the claims of Mr. O'Brien against Mr. Elliott on his notes—there was no conversation about the Company, about the corporation going into bankruptcy—would not say [72] positively whether there was any conversation about Elliott's going East—think he spoke about looking for a job and going some place where he could make some money and get along.

(Copies of files in the case of Bee-Nuggett Publishing Co. vs. Elliott-O'Brien Co. in the case in the Superior Court of Lewis County were received in evidence and marked Trustee's Exhibit "G.")

Cross-examination.

(By Mr. HULL.)

I interviewed Mr. Elliott at the instance of Mr. LeSourd. LeSourd retained me to represent the O'Brien interests. That was the only interest I represented at that time—did not represent the bankrupt until last April anyway—at the instance of Mr. LeSourd and Mr. Hart, Mr. Hart principally. Mr. Hart brought a letter from Mr. LeSourd. At that first meeting when I made the trip

(Testimony of D. G. Abel.)
to Seattle I considered that I was representing the corporation, at least I was representing the stockholders of the corporation at that time—not Mr. Elliott. Mr. Elliott at that time considered he was out—his stock was in escrow—this was the first of May.

(Witness excused.) [73]

Testimony of George R. Walker, for the Trustee.

GEORGE R. WALKER, a witness on behalf of the trustee.

Direct Examination.

(By Mr. ANDERSON.)

I reside at Chehalis—was appointed receiver by the Superior Court of Lewis County on May 7th, 1921—Mr. Hart made an inventory of the assets under my supervision—haven't that inventory with me—suppose it was turned over with all the other books and papers.

As to my experience in the mercantile business—have been in the retail mercantile business for a good many years—have been assessing merchandise stores in Lewis County for a number of years, which gives me quite an inside knowledge of merchandising.

Q. What, according to your opinion, was this stock of merchandise and fixtures worth at market prices, as of the time you took it in May, 1921?

A. Well, as I remember, the invoices for the stock and fixtures amounted to $16,000, approximately—the price or market value of the mer-

(Testimony of George R. Walker.)

chandise would be in the neighborhood of from 25% to 33⅓% less than what the invoice would show.

As to the condition of this merchandise:—Most of the stable articles like sheeting, ginghams and such as that were all gone—a good many broken lines—a good deal of winter ladies' underwear which there wasn't any sale for a good many months—nearly every department badly broken up as far as lines were concerned—Could see the effect of inexperienced sales people handling it—articles in boxes where they were not supposed to be—more or less articles damaged by want of care—kid gloves damaged on account of being tried on, ripped and broken and such as that. That condition did prevail throughout the stock to a certain extent.

The merchandise was clean—nothing that you would call really old merchandise on hand, except that there was some merchandise not suitable for that season of the year, quite a good deal of it. [74]

Cross-examination.

(By Mr. McCLURE.)

Mr. Hart took the inventory under my direction, I told him to take what he considered a fair inventory both for the creditors and for ourselves—thought it should be cut down 25% simply because merchandise of all kinds was dropping very fast and there was a good deal of old merchandise that had been bought at a high price—could not tell the

(Testimony of George R. Walker.)

extent of this damage by the salespeople because I did not go through the whole of the stock—it was nothing unusual—what you could expect in a sale such as Mr. Elliott had been conducting.

I think Mr. Hart deducted 25% off the merchandise in taking the inventory, off the invoice.

Q. And you think it could have been still further reduced 25%?

A. Well, I think that was little enough.

The concern had a goodwill—of value—a very good goodwill—it stood well—a great many people traded there.

Cross-examination.

(By Mr. HULL.)

The peculiar locality of the store was very valuable—it was one of the best locations in Chehalis.

I have seen Mr. Bach, the purchaser of the store from the receiver in bankruptcy, from time to time, and he has always expressed his satisfaction, that he is satisfied with the deal. He told me that he had done better than he expected.

Redirect Examination.

(By Mr. ANDERSON.)

Q. You figured you would get $1,000 less certain small deductions?

A. Well, I always consider a stock of that kind, if you have to put it on a forced sale and turn it into money, would not realize near as much as it would to sell it out in a lump sum, and I claim we got an [75] exceptionally good offer from Mr.

(Testimony of George R. Walker.)

Bach, because he was anxious to locate in Chehalis, and in that particular location, and I rather took advantage of the occasion.

One of the elements was the fact that the business was a going concern with a goodwill.

I considered it a very good sale.

(Witness excused.) [76]

Testimony of Alfred E. Hart, for the Trustee.

ALFRED E. HART, a witness on behalf of the trustee.

Direct Examination.

(By Mr. ANDERSON.)

I went to Chehalis on November 8, 1920—went back there some time in February, 1921—wrote a letter to Mr. LeSourd on April 8th—at the time I was there in April the business had fallen off considerably—sales not near so much as they had been—do not remember the condition of our indebtedness to the Bank on April 8th. I had nothing to do with the books.

It is a fact that the bank had made a determined stand for the payment of its accounts at that time but I cannot recall how much we owed them.

Q. What did the bank say to you about the payments of its account April 8th?

A. They thought they ought to receive something on their notes, that we were not taking care of them—that they ought to have at least $500.00 or $1,000 a week—think they said that other creditors were paid and they were not.

(Testimony of Alfred E. Hart.)

I did not say that on April 8th, 1921, Elliott and I had reached the conclusion that the store was in a position where it had to be wound up.

This letter was written by me on April 8, 1921, to LeSourd reading, "The sale is not coming up to expectations, the average sales not going over $275 daily so far. As the bank has taken a determined stand for the immediate payment of their loan, or at least $1000 weekly, I am fearful that some creditor may step in and close us up," was based on the amount of business we were doing and if we had to pay the Bank we were satisfied we could not do it, and some of the rest of the creditors would step in.

Q. And further you said: "There are several accounts long past due and I cannot see how they can be satisfied to the extent of allowing us to continue much longer on the basis we are now conducting the business." [77]

Q. Is that a fact that you had gotten to a point where you were satisfied you could not let the business continue any longer on the basis on which it had run?

A. Without someone stepping in—and suing us—and closing us up.

And to the date when Mr. Elliott concluded his negotiations with Carson-Pirie-Scott company about going east: Well, he had been in correspondence with them for perhaps two or three weeks—just when he concluded the arrangements with them I did not know. He had not made any definite

(Testimony of Alfred E. Hart.)

plans with Carson, Pirie, Scott & Company up to the time I was elected on April 23d, as the proposition had not been accepted by them—think it was a week or ten days before he left.

I did not tell the people at Chehalis generally that I was going to succeed Mr. Elliott—nor the bank, until after it was consummated, when I think I told them I was going to take charge of the store—talked with Mr. Dan Coffman, told him I was going to take charge as soon as Mr. Elliott left, that we were going to continue the business and pay our bills as we had been doing—don't know just what I wrote Mr. LeSourd.

The banker knew from our deposits that the sales were not going well, that they were running only $275.00 daily—told him that in order to do any business at all, we had to slash prices to such an extent it would mean there would be no surplus over and above the liquidation of the wholesale bills and what was due the bank.

Mr. Elliott was always very optomistic about this business.

The advertisement for the sale in April stated that we were closing out—ran this advertisement during April—were running ads in the papers, "Closing Out Sale".

I expected, from these different sales we were running, that we might be able to continue the business until we had paid up.

Q. Mr. Hart, during all of the year 1921 isn't it a fact that you were making an effort to close out

(Testimony of Alfred E. Hart.)

the store in bulk to any purchaser [78] who would come along?

A. We were trying to reduce the stock to a sum where we could sell it.

I would not say we were negotiating with prospective purchasers during each month in 1921.

It was the plan of the bankrupt to so reduce the stock to a figure in the neighborhood of practically $10,000 or $12,000 so we could find a purchaser who would take the business over—cannot say how long this plan was in effect, or how many months. It might have been two or three months.

I went there in February. In March we were running sales so as to pay off our indebtedness and reduce the stock.

Q. And also to close out the store?

A. If we could find a buyer, yes.

As to my experience in the retail dry-goods business, I had been in the business myself, had worked for department stores—five or six years in the retail end of it and seven and one-half in the wholesale.

Q. Let me ask you if on April 13th, you and Mr. Elliott had not reached the conclusion that this business must be wound up, that you could not meet your obligations that were coming due, and there was imminent danger of a receivership?

A. Well, this business had dropped off to such an extent that we could not meet the bills.

Q. Wasn't that discussed between you?

(Testimony of Alfred E. Hart.)

A. Yes, what was going to be done if we could not pay our bills, yes.

Q. Isn't it a fact that on April 13th it had been determined that Mr. Elliott would leave the Company and go to Chicago?

A. I am unable to say on just what date.

Q. Refresh your recollection by looking at your letter dated April 13th, what do you say?

A. Well, that letter doesn't state definitely about Elliott's going. [79]

Q. No, it does not say when he is going, but it does say it has been determined he is going.

A. Yes, it was understood that he would go sometime very soon.

Q. Didn't Mr. Elliott state to you at that time that he could not see how at the rate business was going, that they were going to meet their obligations?

A. To the effect that we were not able to meet our bills as they came due.

Q. That had been talked over between you people?

A. Yes.

Mr. Elliott offered this business for sale to the Mottman Mercantile Company of Olympia in April, 1921—took it up with the son who is in business in Chehalis—they did not make any offer that I know of.

Q. As early as April 28, 1921, is it not a fact, knowing conditions there as to your assets, also your liabilities, that you believed that the creditors

(Testimony of Alfred E. Hart.)

would be fortunate in receiving 75 cents on the dollar on their claims?

A. No, sir.

Q. Refresh your recollection by your letter of April 28 to Mr. LeSourd, isn't that a fact?

A. Just as I stated in the letter.

Mr. McCLURE.—I would like to ask Mr. Hart a question about this letter.

Mr. ANDERSON.—All right.

(In response to questions by Mr. McClure:)

I went to Chehalis in regard to this business at the request of Mr. LeSourd—for the O'Brien interests, the stock interests—and while there, I wrote these various letters to Mr. LeSourd as to what I found—that is the reason I wrote those letters in this way.

Mr. McCLURE.—I object to the interrogatory and to the letter itself on the ground that it is a communication between stockholders, and not binding on the creditors.

The COURT.—Well, he was put in charge of the business at that time. [80]

Mr. McCLURE.—No, there is no testimony to that effect.

The WITNESS.—I was in charge just in name until after he left.

The COURT.—Well, he left on the 27th.

Mr. ANDERSON.—April 28th. He was the man in charge.

The COURT.—The letter may be read; exception.

(Letter read.)

(Testimony of Alfred E. Hart.)

Q. That stated exactly the condition there as I understood it.

A. None of the creditors that I knew of, except the Western Dry Goods Company, were sending representatives to Chehalis, during April while I was there, demanding payment—Mr. Beamer, of that Company, came down. We received some letters requesting payment in April.

I assisted the receiver in taking the inventory made by him. That was taken on the basis of what the goods were marked—the invoice price. I also assisted in taking the inventory just before Mr. Elliott left—on the same basis. Mr. Elliott was still there when we started taking the latter—some time in April—don't just remember the date. It took us three or four days to write it up.

Cross-examination.

(By Mr. McCLURE.)

I talked with Mr. Dan Coffman at the bank—a day or two prior to Mr. Elliott's leaving, or after—might have been about April 28th—think I was making a deposit when the question came up—told Mr. Coffman that Elliott had gone away. He asked what was going to be done about the business. I said, so far as I knew it was going to continue—as a going concern.

My idea in writing this letter to Mr. LeSourd in April, in which I said that in order to do any business at all, we would have to slash prices to such an extent that it would mean no surplus over and above the liquidation of the wholesale bills

(Testimony of Alfred E. Hart.)

and the bank—my idea was that the debts would be paid, but that there would be nothing left for the stockholders. That was my idea up to the date of the appointment [81] of the State Court Receiver.

I might have suggested to Mr. Elliott that I would go to the O'Briens and make an offer for the purchase of the capital stock, about April 13th. I might have done so, we talked it over on several occasions, about buying it. My idea then was that the capital stock still had value.

There was no reason to change that opinion up to the day of the appointment of the Receiver; in fact, I thought so much about the possible success of the store that I worked for several months just for expenses alone, thinking we might be able to get that at a figure we could handle it. I had faith in the store.

I knew O'Brien very well. He was very anxious to save his investment there. I also knew that Elliott wanted to save the loan.

Redirect Examination.

(By Mr. ANDERSON.)

Q. I want to ask the witness if you do not think you are mistaken when you said you told Mr. Coffman, on April 28th, that this business was going to continue as a going concern, after refreshing your recollection by the fact that you were advertising in the newspaper that you were closing out your store?

A. I did not think any other way, because I did

(Testimony of Alfred E. Hart.)

not know at that time what else would be done; and so I just told Mr. Coffman that, so far as I knew, everything would go on and we would continue to pay our bills. I did not know, absolutely, that it would not go on very long, no.

(Witness excused.) [82]

Mr. ANDERSON.—To save time and to save the taking of depositions of Carson, Pirie, Scott & Co., I agreed with their counsel that letters between the two might be put in evidence upon the assurance of Mr. Woodley that they were true copies and they agreed Mr. Climenson might testify as to the condition of the accounts of the several creditors from itemized statements furnished to him at his request by the several creditors.

Mr. McCLURE.—Said testimony to be subject to correction in the course of the trial of any errors shown by the record in the Court.

Mr. WOODLEY.—No objection. [83]

Testimony of S. G. Climenson, for the Trustee.

S. G. CLIMENSON, a witness on behalf of the trustee.

Direct Examination.

(By Mr. ANDERSON.)

I am the trustee in this matter. Being unable to get at the items of the accounts of the several creditors from an examination of the bankrupt's books, I procured statements from all the creditors except one, Landon Hersheimer Company, which has a claim of $642.50, also with the further exceptions of

(Testimony of S. G. Climenson.)

Mr. Abel, Allen-Nugent Company and Louis Cohen, whose claims have been filed since I sent for the statements from creditors. I have no idea whether they were creditors the first of January or later.

With three exceptions these itemized statements tallied with the proofs of claims. There were slight discrepancies in three of them, Bee-Nuggett Publishing Company, Nonatuck Silk Company and Twin City Feed Company—considerably less than $10 in each instance.

(The statements of accounts of various creditors were received in evidence, and marked Trustee's Exhibit "H.")

I have practiced law for some time—am also an accountant—have made a summary from these statements, showing the amounts of the indebtedness of the bankrupt to its several creditors as of January 1, 1921, also of the amounts of merchandise sold by them to the bankrupt and of the payments made to them on account from that date to the bankruptcy.

The percentage figures shown in the column on the extreme right of this sheet, headed "Percentage of Debt Paid," is the percentage of the payment made to the creditors on each individual claim during the year 1921, on their entire indebtedness.

The next column to the left, this first column, showing:

20%, opposite Bee-Nuggett Pub. Co.
9%, opposite Fleischner-Mayer & Co.
9%, opposite Royal Worcester Co.

(Testimony of S. G. Climenson.)
67%, opposite Coffman-Dobson Bank,
55%, opposite Carson, Pirie, Scott & Co.

These are the five accounts that have been objected to by the trustee. [84] The first one, that of the Bee-Nuggett Co., showed a balance due on January 1, 1921, of $339.50. Since that date, payments were actually made to it in excess of the current bills for goods furnished by it to the bankrupt during that period, resulting in a 20% application on the old indebtedness existing as of January first, and making its present claim, as filed in bankruptcy, $274.25. In other words, all goods furnished in 1921 were paid for 100 cents on the dollar, and it received an amount of payment over and above that, equivalent to 20% on the balance due it on January 1, 1921. The same thing applies to the three other claims.

In the case of the bank: The bank statement shows that there was $5,500.00 due it on January 1st, that they advanced $800.00 later and were paid $4,000.00, leaving their present claim around $1,800.00—or 67% of the old indebtedness paid.

This statement (trustee's summary) shows that of the $13,000.00 paid to the creditors during that period, 64% went to the bank and Carson, Pirie, Scott & Co.—during the four months preceding Bankruptcy. All other creditors got $4,800; and these two creditors got $8,500.

To be exact, the period during which these payments were made exceeded the "four months period" somewhat; they ran back to January 1st,

(Testimony of S. G. Climenson.)

and the date of bankruptcy was May 13th. That is the time we took, the first of the year. They were put into the hands of the Receiver in the State Court on May 7th, I think.

Mr. HULL.—Do you contend that is in full? It is simply a summary.

Mr. ANDERSON.—It is a summary, that is all.

Mr. HULL.—It has no value as evidence.

Mr. ANDERSON.—Yes, it has value as evidence. It is a summary of what those books show and what the witness has said, instead of having the Court go through it and make a tabulation himself.

Mr. McCLURE.—I desire to interrogate the witness—I suppose your Honor will let it in for the Court's information and convenience. [85]

The COURT.—Yes.

Mr. McCLURE.—I will formally object to it.

The COURT.—Objection overruled; exception allowed.

(Trustee's summary received in evidence and marked Trustee's Exhibit "I.")

In further explanation of Trustee's Exhibit "I":

Where the figure "O" appears in the second column, it means that, according to the statement furnished me by that creditor, there was no balance due it on January first.

(At request of Mr. Anderson, the witness marks "purchases" and "payments" at the heads of the columns on Trustee's Exhibit "I.")

Turning to the account of (i. e., the statement furnished by) Bee-Nuggett Co., this shows:

(Testimony of S. G. Climenson.)

Balance due January 1st			$339.50
Payments since:			
April 4	339.50		
April 25	234.50	574.00	
Goods and services furnished since:			
January	234.50		
February	154.50		
March	31.50		
April	68.25		
May	15.00	503.75	
EXCESS		70.25	70.25
Amount of Claim			$269.25

Mr. ANDERSON.—We are taking the results of the payments, taken together. * * * and it is our theory of the law; where a creditor furnishes current merchandise and then is paid for it, within the meaning of the Bankruptcy Act, within the "four months period," one offsets the other; and, in the meaning of the state law relating to preferences, it means that during the period of insolvency one can balance the other. * * *

The COURT.—You are ignoring the old rule that a payment on account applies to the oldest part of it. [86]

Mr. ANDERSON.—It is my understanding that under the common law the payment relates back to the oldest part of the account, but in the meaning of a preference under the Bankruptcy Act, the courts segregate the period of four months and allow one to offset the other; and if there is no depletion of the estate as a result of the dealings, no preference has taken place.

(Testimony of S. G. Climenson.)

Turning to the statement furnished by Royal Worcester Co., this shows:

Balance due January 1st			$158.25
Payments since:			
March 4	142.25		
" 18	14.50		
" 29	16.00		
" 25	3.00	175.75	
Goods furnished since:			
January	2.75		
February	13.38		
"	8.81		
March 23	18.74		
	117.48	161.16	
EXCESS		14.59	14.59
Amount of Claim			143.68

That shows 9% of the old indebtedness paid.

Turning to the statement furnished by Fleischner-Mayer Co., this shows:

Balance due January 1st			2,714.59
Payments since	1,717.26		
Goods furnished since	1,496.77		
EXCESS		220.49	220.49
Amount of Claim			2,494.10

That results in a payment of 9% on their old account.

(Discussion between counsel as to trustee's correspondence re Fleischner-Mayer's claim.)

Mr. ANDERSON.—Mr. Hull, can we not stipulate that the debits and credits shown in reference to the bank's claim are correct? [87]

Mr. HULL.—With the corrections that were made on the last item, a credit of $200 on January 1st on the note of $2,600,—the credit should be $143.08.

(Testimony of S. G. Climenson.)

Mr. ANDERSON.—We have a corrected claim filed, and have corrected our objections to it.

Mr. ANDERSON.—Do I understand the last item of $143.08 was the balance on deposit in the bank which the bank appropriated and applied to its indebtedness?

Mr. HULL.—Yes, they simply exercised their right of setoff, and applied it on the matured note.

Cross-examination.

(By Mr. McCLURE.)

In making up my analysis, I have not assumed all through that the current bills were paid in due course of business as they matured—I did not find that to be the case.

Q. Well, what is the basis of your computation?

Mr. ANDERSON.—I object to that as not proper testimony, that is a matter of argument.

The COURT.—He may answer; exception allowed.

A. To the first part of your question I should say that the bills were not paid in due course of business.

A. Take the claim of the Western Dry Goods Company, Trustee's Exhibit "H"; which shows that on January 1st, 1921, there was an indebtedness of $904.66, and after that day various invoices of goods were purchased by the bankrupt and payments made by the bankrupt, one of these payments being a substantial sum of $331.15 on March 15, and another $492.32 on April 25, 1921,—

A. Yes.

Q. Now, in your computation, on what invoices

(Testimony of S. G. Climenson.)

were the two payments I have mentioned applied?

A. In my computation they were not applied on any invoices, but the payments were applied against the indebtedness that arose after [88] January 1st, 1921.

That is the basis of my computation in this case and all other cases—I made it for the purpose of arriving at an equitable result.

The COURT.—I think the witness should be permitted to explain.

A. I am going to explain not only the figures, but the theory * * * to explain the theory, I must explain the reason for the theory.

When Mr. Abel came to us, about May first, it was understood that something had to be done with the bankrupt concern for the reason that it was claimed that the bank was refusing to pay the Elliott-O'Brien Company's checks until they had their money—have no personal knowledge as to whether that was true—being the attorney for the Seattle Merchants Association, I was requested by Mr. Gounce, the manager of the association, to inform them what action should be taken. The stockholders were not available, so an assignment for benefit of creditors was out of the question, and a suit for a receivership was necessary. After the concern went into bankruptcy, various rumors came to our ears about the Carson-Pirie-Scott claim—that they had put on large sales there and taken the money. Then when I was appointed trustee, Mr. Walker, the receiver, said he had all the books

(Testimony of S. G. Climenson.)

that were turned over to him, and they were turned over to me as trustee. But I could not find any cancelled checks, or check-stubs; and the books were not in such form as to show the indebtedness to each individual. So I simply sent out notices to all the creditors to give me a statement, to arrive at who got the payments—we simply took the period of four months, or practically from the first of the year, to see whether or not any large creditors had been paid at that time.

The books showed that they had always owed past due money. They owed considerable money in 1920, more than they did in 1921. Their sale in November reduced it about $4,000, but they did not reduce it any further, except the indebtedness was switched—the bank got paid off, and Carson-Pirie got reduced considerably; but they owed [89] other creditors larger amounts. * * *

These payments to the Western Dry Goods Company were simply applied (under my theory) as far as they went on the goods furnished in 1921. They were insufficient to pay for the same, and therefore they have received nothing on their old indebtedness. Under the theory I am presenting in this case, I consider that there has been no preference in the case of the Western Dry Goods Co. * * * I will say this in regard to the Western Dry Goods Company, that it is picked out apparently in this case because of the amount of payments that it received right at the later period. It is quite true that Mr. Beamer, apparently, from the testimony here,

(Testimony of S. G. Climenson.)

was absolutely satisfied that the concern was going to run, in spite of the fact that correspondence was already had between these parties that it was going to close up, three weeks before.

Fleischner-Mayer likewise had received quite a large sum of money, $1,717.26, as you will notice. One difference was: If the Western Dry Goods Company had received $200 more they would have been in the same position as Fleischner-Mayer, because they (Fleischner-Mayer) received a little on the old indebtedness.

(Here follows extended discussion between counsel and the referee, as to the theory presented by the trustee—attempting to define same—part of which is as follows:)

The COURT.—Mr. McClure's theory is that this business was running along in the ordinary way, all purchases were made in the due course of business and all bills paid in due course, and right up to the time they had to quit.

Mr. ANDERSON.—Yes, and it is our theory that they were not paid in due course. Debts were accumulating and getting past due all the time, all during the period of 1921. In other words, the company was insolvent from 1921 down to the date they closed, because they were not paying their bills in due course, when they became due in the ordinary course of business. [90]

(By Mr. McCLURE.)

Q. Take the claim of Marshall-Field Company—as to that company there was nothing due on the

(Testimony of S. G. Climenson.)

first of January, and after that merchandise of $697.83 was received and nothing paid?

A. Yes.

Q. And yet, the Western Dry Goods Co. and Fleischner-Mayer received large sums of money after January 1st, on current invoices. What is the trustee's analysis of the situation with respect to a preference * * * as between Western Dry Goods Company and Marshall-Field & Company?

A. You mean in the eye of the law, or actual fact of payment?

Q. I mean your view—you are a lawyer. Was there a preference in favor of the Western Dry Goods Company as compared with Marshall-Field & Company?

A. Yes, my view undoubtedly is that if Marshall-Field & Company had had a man on the ground and was as energetic as some of the creditors, they would have got some money also.

Q. Is that the only answer you can give to the question?

A. That is the only answer I can give you, otherwise everybody has a preference over everybody else unless you take the actual percentage. We have to have some starting point and some point to arrive at. I have taken four months.

Q. If you are satisfied, I will be satisfied with your answer.

A. It is a very hard question to answer, Mr. McClure, because you can readily see we have to take the entire cash derived for the period of insolvency

(Testimony of S. G. Climenson.)
and prorate it, which would make an adjustment for every creditor.

My investigation of the accounts of the creditors was confined to the creditors filing claims. I might say that there was $2,000 paid off and we do not know whom it was paid to. The books do not show the creditors paid, and we have no claims filed, and we cannot establish who they are; in other words, there was $2,000 existing the [91] first of January, about $2,000—wasn't it Mr. Woodley, you checked it over with me?

Mr. WOODLEY.—I do not remember.

The WITNESS.—Whatever it was, I do not absolutely know who the creditors were, have no knowledge. All we can do is take the people who are before us.

(Witness excused.) [92]

Testimony of William F. Elliott, for the Trustee (Recalled—Cross-examination).

WILLIAM F. ELLIOTT, a witness on behalf of the trustee, recalled for further cross-examination.

Cross-examination.

(By Mr. WOODLEY.)

The inventory figures, about which I testified yesterday, which I completed on the night before I left Chehalis, April 27th, were, as I recollect:

(Testimony of William F. Elliott.)

Merchandise stock	$16,000.00	
Fixtures	4,000.00	
Accounts receivable	500.00	(at least)
Totaling	$20,500.00	

That $16,000.00 of inventory value was made, as near as I could figure it, at the market value at that time. By that I mean the replacement value.

At that time the stock received before the first of the year was heavier than the stock we had received after the first of the year, a good deal heavier.

On the occasion when Mr. LeSourd was down at Chehalis, on April 22d, we made up a list of the indebtedness, which showed when the indebtedness fell due with discount, or net. That list approximately shows the state of our merchandise accounts on April 22, 1921—and the months in which they fell due and the creditors to whom due in those months. There might have been a few items that were not exactly right, but the amounts were approximately correct—within $100. Absolutely everything was taken off of our books according to our ledger account. [93]

Mr. CLIMENSON.—This purported statement of accounts shows a very small amount due in January. All the rest of the indebtedness came along after that period. This $1,200 undoubtedly corresponds with his $1,200 of past due bills.

The WITNESS.—"Past due" is "Due"; they mean the same (in this statement and on our books).

Mr. ANDERSON.—And you had a bunch that fell due in January and another that fell due in Decem-

(Testimony of William F. Elliott.)

ber. Now if this was written off (made out) the 31st of December, the bills that were not paid up to December first were past due bills, and the bills that fell due during December—

A. Were past due.

These other items here, Bee-Nuggett, etc.—I cannot tell whether they were past due—some possibly were—the 1920 taxes were not due until this year—the 1921 taxes were not due until next year—our overdraft at the bank was due in April, yes, and we renewed our notes at the bank, $5,500.00.

Q. You would have constantly renewed your notes at the bank?

A. Our notes up to January first had been on demand. The scattered accounts would have taken care of themselves. We seldom let them go over, except the Bee-Nuggett account. It went over only two months. But the other scattered accounts, we always took care of them as they fell due.

(The list of indebtedness referred to was admitted in evidence as "Respondent's Exhibit 1.") [94]

Testimony of D. T. Coffman, for Respondents.

D. T. COFFMAN, a witness on behalf of the respondents.

Direct Examination.

(By Mr. HULL.)

I am the cashier of the Coffman-Dobson Bank, one of the claimants here—the one who negotiated with the Elliott-O'Brien Company most of the mat-

(Testimony of D. T. Coffman.)

ters that they had up with the bank.

Elliott-O'Brien Company's statement of December 31, 1920, now shown me, was handed to me by Mr. Elliott in the usual course of business.

(Elliott-O'Brien Company's Statement of December 31, 1920, was admitted in evidence, as "Respondents' Exhibit 2.")

Thereafter I discussed with Mr. Elliott the condition of his business, from time to time. These conversations did not disclose any material change in the condition of the business—showing a margin of surplus over the debts.

Q. Now, Mr. Coffman, when did you first learn of any difficulty with the Elliott-O'Brien Company?

Mr. ANDERSON.—I object to that as immaterial.

The COURT. — Objection overruled; exception allowed.

A. The 3d or 4th of May. Some checks came through bearing the indorsement of Elliott-O'Brien Company, from one of the other banks in the city. We immediately went up to our attorney, Mr. Hull, and asked him if he knew of any trouble; and he took it up with one of the other attorneys in town and reported that he was the representative of Elliott-O'Brien Company and he had had a conference with the Seattle Men's Association. On receipt of that advice we charged the account with the balance and applied it on our note which was past due.

Up to that time the Elliott-O'Brien Company had

(Testimony of D. T. Coffman.)

been carrying a balance in their account practically the same amount as they had for years.

During the month of March, or thereabouts, the stock of Charles O'Brien and the other O'Briens had been deposited in our bank in [95] our bank in escrow for some period of time—purchased by Mr. Elliott, under conditions attached to the escrow.

Mr. HULL.—That is all.

Cross-examination.

(By Mr. ANDERSON.)

The three notes, which we held, dated January 1, 1921, fell due April 1st. As to making a demand for payment, we called Mr. Elliott over and asked him what he could do about it. He said they could make payments of a thousand dollars a week on those notes, as the outcome of this sale which they were going to have.

I don't think I made complaint, either to Mr. Elliott or Mr. Hart, that they were paying off the merchandise creditors and letting the bank go. We thought it was time that they would reduce and they made a voluntary statement that they would make a reduction to us of a thousand dollars a week.

They had closing out signs on their building, during 1921. It was not generally understood, however, in Chehalis, that they were going to close their business, close out as fast as they could—they were not.

Q. Didn't you know they were advertising for a purchaser to sell out?

(Testimony of D. T. Coffman.)

A. We supposed that they were going to continue in business.

Q. The question was whether you knew they were looking for a purchaser?

A. I knew they had purchasers in view.

Q. You knew they were planning to sell out and quit?

A. Not unless they found a purchaser.

Q. If they could get one they would, and they were looking for one. When did you first learn of that fact?

A. Along about the 15th or 16th of April possibly. [96]

Q. When did you first learn that Elliott was going to leave the Company and go to Chicago?

Mr. HULL.—I hardly think this is cross-examination.

The COURT.—He may answer if he knows.

A. I don't know as I knew that definitely until after he had left. Mr. Hart came in and told us he had gone.

I did not know on the 23d of April that Mr. Hart had been elected secretary of the concern in place of Mr. Elliott, resigned—don't think I knew, before the change actually was made, that they planned on substituting Hart for Elliott. Our records probably show when the signature card was changed. I do not know when that occurred. In the regular course of business it would not necessarily have been at the time the election took place; I think Mr. Elliott signed checks up until the night he left.

(Testimony of D. T. Coffman.)

I do not know as to whether there was an overdraft at the bank during April, 1921—presume the ledger sheet would show.

The COURT.—Did this company do all its banking in your bank?

A. It did up until the 3d of May.

Q. That is what put you on inquiry?

A. Yes. They had been doing business with us in the regular course of business and suddenly stopped.

Mr. ANDERSON.—Q. Looking at the bank ledger-sheet, read off the balances of the bankrupt with the bank commencing with April first?

A.

April	1	357.69
	1	683.66
	2	1221.19
	5	1051
	6	242.16
	8	223.42
	9	16.20
		overdraft
	11	180.58
	12	282.21
	13	129.24
	14	33.03
	15	412.78
	16	452.79
	18	751.15
	19	736.00
	20	742.83

[97]

(Testimony of D. T. Coffman.)

	21	864.78
	22	861.28
	23	369.71
	25	1281.72
	26	1461.66
	27	616.07
	28	964.62
	29	720.30
	30	928.78
May	2	427.65
	3	158.50
	4	143.08

The account was closed the next day, May 5th.

The deposits during the same period of time were:

April	1	408.85
	2	403.23
	3	816.65
	5	344.77
	6	291.65
	7	347.06
	8	146.00
	9	265.63
	11	393.28
	12	126.63
	13	202.72
	14	403.79
	15	379.75
	16	240.01
	18	327.19
	19	827.95
	20	215.81

(Testimony of D. T. Coffman.)

	21	173.04
	23	622.80
	25	1199.51
	26	414.44
	27	353.03
	28	385.30
	29	255.68
	30	234.36
May	3	239.32

Q. Mr. Elliott said the bank had been carrying the bankrupt for two or three years for approximately this amount which was owing January 1, namely, $5,500. That is correct according to your figures?

A. Had been carrying them more than that.

Q. On January 1, when these three notes were executed, they were in fact renewal notes of the old notes that had been previously given?

A. We granted a credit there of $5,500 for three months.

Q. But some time during 1920 he had borrowed at least as much as $5,500 and given his notes which fell due January 1, 1921, hadn't he? [98]

A. They were demand notes up to that time.

Q. He borrowed at least as much as $5,500.

A. Borrowed more than that.

On January 1st, he (the Elliott-OBrien Co.) executed three notes which took up the demand notes previously given. We carried him after he made the demand notes as an ordinary customer, in the ordinary course of business.

(Testimony of D. T. Coffman.)

At no time during 1918, 1920, or 1921, was the bank account over balance so that the company owed the bank nothing.

Q. Now, those three notes fell due April 1, 1921. Did Mr. Elliott on behalf of the bankrupt ask to take up the old notes by giving new notes?

A. Simply stated he thought he could pay a thousand dollars a week; and we let the notes stand that way with that provision. When the notes fell due he had a regular notice in the course of business—that these notes would fall due on April 1st—and he came in and said he could pay them off at the rate of $1,000 a week—didn't ask for an extension.

Q. Mr. Coffman, isn't it a fact that in order for the Elliott-O'Brien Company to continue in business they must have credit with the bank just as they had in the past, or in approximately the same amount, in order to conduct their business as a going concern?

A. Their own statement was, that they would not then be able to get along without the help after they had cleaned up, that they probably would come back and ask us to discount bills; and we probably would have taken care of them. We were liquidating as any other bank was at that time.

Q. If they paid you off in full at the rate of $1,000 a week, they would not have any credit with the bank to do business in paying off their merchandise bills, would they?

A. Well, that could have been left with us to

(Testimony of D. T. Coffman.)

judge, after they paid off. [99]

Q. You were familiar with the deposits during February and March? You knew if they paid you $4,000 in the month of April they would not have anything left for their other creditors, would they?

A. They were putting on special sales and expected to raise quite a sum of money.

Q. You knew there was a man there from Portland to put on an extra special sale?

A. I think there was a man there from the outside.

I do not remember any such advertisement—offering their merchandise at 50 cents on the dollar, or two dollars for one. They were offering inducements.

Redirect Examination.

(By Mr. HULL.)

In a small city it is not at all unusual practice for merchants to have an outside man come in to conduct a sale. Solvent, going concerns periodically do that.

Recross-examination.

(By Mr. ANDERSON.)

Q. Do you know of any solvent concern in Chehalis that has brought an outside man in and conducted a special sale—and continued in business?

A. I do.

(Witness excused.) [100]

Testimony of William F. Elliott, for the Trustee (Recalled).

WILLIAM F. ELLIOTT, a witness on behalf of the trustee, recalled.

Direct Examination.

(By Mr. ANDERSON.)

This statement, Respondent's Exhibit No. 2, dated December 31, 1920, furnished to the bank according to Mr. Coffman's testimony, is the identical statement we sent also to Carson, Pirie, Scott & Co.—a copy—we made three copies—showing the condition of the business December 31, 1920.

(Witness excused.)

(Case closed.)

[Indorsed]: Apr. 4, 1922. [101]

Trustee's Exhibit "A."

CARSON, PIRIE, SCOTT & CO.
CREDIT DEPARTMENT.
Chicago, February 17, 1921.

Mr. C. L. LeSourd,
c/o Dexter Horton Trust & Savings Bank,
Seattle, Washington.

Dear Sir:—

I have been advised by Mr. Hart and Mr. Elliott that they have talked with you about matters at Chehalis. As you know, Mr. O'Brien is away and it will possibly be some weeks before we can get into direct communication with him again.

I am writing both Mr. Hart and Mr. Elliott today that all arrangements with reference to the store must be made with you as you are fully empowered to act for Mr. O'Brien. I feel that it would be best for all concerned to have this business closed out as speedily as possible, but no doubt you are in closer touch with conditions and whatever action you may decide upon I am sure will be perfectly satisfactory to Mr. O'Brien.

If you make any definite arrangement with reference to disposing of this matter, I will appreciate it if you will advise me so that as soon as I again get in touch with Mr. O'Brien I can let him know what has transpired.

Yours very truly,
C. T. DAVIS.

CTD.
EE.

Feb. 18, 1921.

Mr. C. H. O'Brien,
c/o Mr. Coram T. Davis,
Carson, Pirie and Scott,
Chicago, Ill

Dear Sir:—

There is little of news to report concerning the situation at Chehalis. Several days ago Mr. Elliott and Mr. Hart called upon the writer, and the proposition for sale of the stock was clearly set before Mr. Elliott. I tried to show him the advantage to him of obtaining a cash purchaser for the stock, telling him that in all probability if you could obtain payment of your notes and 50 cts per dollar upon your

stock, you would without doubt overlook his indebtedness to the corporation of approximately $5000.00. I told him that while I have no positive information, I supposed that unless some satisfactory sale could be accomplished that in the final closing out of the stock a judgment would be taken against him for the amount due the corporation. [102]

Mr. Elliott seemed to think that on account of present conditions no advantageous sale could be made, and Mr. Hart joined with him in this position. They both claimed that a greater return could be accomplished by putting on a closing out sale, which we understand they are now doing. Mr. Hart has returned to Chehalis with Mr. Elliott, telling me that the only cost Elliott-O'Brien would be put to—would be the actual expenses.

I have talked with Mr. Adams of the local Carson, Pirie and Scott Co. office, and have him on the look out for a prospective purchaser.

I am not just satisfied with the arrangement at Chehalis at present, but do not know of a good man to place in charge. Mr. Elliott intends to purchase a little Spring stock to mix in with the other, probably about $1500.00 worth, and has gone to Portland for that purpose.

Received a letter from Mrs. Alice B. O'Brien, advising that she would dispose of her stock for 50 cts on the dollar, but have heard nothing from Salt Lake City. We are hoping that some person will yet be found to purchase the stock as it stands, but if such a one cannot be found, it would probably be better to allow the stock to be closed out. Messrs.

Elliott and Hart seem to think that when the stock is reduced to about $10,000.00—which they believe can be accomplished by about July—that it would sell more readily than now.

We are perfectly willing and glad to render all the help we can in this matter, but cannot give it the undivided attention that we could were we on the ground. With best personal regards, I am,

Yours very truly,

_____,

Asst. Cashier.

CLL:P.

March 5th, 1921.

Mr. W. F. Elliott,
c/o Elliott-O'Brien Company,
Chehalis, Washington.

Dear Sir:—

We thank you for the statements of amount of business done during February, and notice that your sales exceeded your bank deposits about $600.00. Presumably this is an addition to your book accounts. We also notice that you paid wholesale accounts totaling about $3600.00. We would like to have similar statements each month; also statement concerning the amount of goods purchased, or the inventory value of goods on hand. In other words, we would like to keep in touch with the situation to know if the indebtedness of the firm and the inventory value of stock is being reduced proportionably. [103]

A dry goods man by the name of Max Davis, who now owns two or three stores in different cities,

interviewed us this week concerning purchase of business of Elliott-O'Brien Company. We believe however, that he considered the obligation a little too heavy for him to assume at this time. He was also considering a store in Centralia, and it may be that he will drop in to see you.

We are interested to see the business closed out satisfactorily, either by disposing of the stock as you are now doing—or by a satisfactory transfer of the entire business, for your own good as well as for the interests of the O'Briens. While we are not authorized to make such a statement, it is the writer's opinion that if some reasonable amount, say 50%, can be realized on the stock—the O'Briens will take no action against you personally on your indebtedness to the firm. However, if nothing can be realized on the stock directly, you could not expect them to overlook that account.

With best personal regards to you and Mr. Hart, we are,

Yours very truly,

_____,

Asst. Cashier.

CLL:P.

Mar. 12, 1921.

Coram T. Davis,
c/o Carson, Pirie, Scott & Co.,
Chicago, Ill.

Have received tentative cash offer to purchase merchandise stock of Elliott-O'Brien Company at ninety cents on the dollar present replacement value fixtures and other assets to be included without

additional cost. Elliott shows stock about twenty six hundred, book accounts fifteen hundred, other assets two hundred and fifty. Liabilities past due for merchandise thirty four hundred, now due and maturing ninety three hundred, due to bank Seventy-one hundred. Miscellaneous liabilities Sixteen hundred.

Apparently proceeds of such sale would just about pay debts believe we should get 100 cents on dollar same proposition otherwise. Fear receivership if business drifts along. What do you think of the proposition.

Suggest you wire me must get full replacement value of merchandise. If you think sale should be made at ninety cents send separate wire.

C. L. LeSOURD. [104]

ELLIOTT–O'BRIEN CO.

Chehalis, Wash., Mar. 14, 1921.

Mr. C. L. LeSourd,
c/o Dexter Horton Trust & Savings Bank,
Seattle, Wash.

Dear Sir:—

Continuing our conversation over the phone.

The charge accounts run approximately $1189.22.

Regarding the taxes for the year 1921, which was assessed on Friday last and which is not due or payable until March 15th, 1922. Unless there is some understanding between ourselves and Mr. Worth or anyone else who might buy the stock, we are held liable for the payment of the tax, which will amount to about $500.00. The person buying the stock could continue to do business until Feb.

28th, of the next year and then move out and get out of paying any tax for the year.

There is no question that the person who buys the stock at this time should assume this years taxes.

Should Mr. Worth decide to buy the stock at market value it will require a good referee to adjust the differences between Mr. Worth and myself regarding just what would be the market value of various items. Merchandise for instance that we have had in the store say for two years, which has not advanced or declined. The better plan as I see it would be to sell the stock at the present market price, which was the price taken in at inventory. Have gone over every item and made deductions where necessary, but did not raise any costs so it would be a fair way of calling it in. Mr. Gray agreed when he and Mr. Worth were here that would be the best way to inventory the stock.

Have not made the correction on the price tickets as yet, but intend going over everything tomorrow. Have all the notations on our Inventory sheet.

Believe it good business to keep the cash register, also the accounts. Feel we would obtain some benefit from them.

Yours very truly,
ELLIOTT-O'BRIEN CO.,
By W. F. ELLIOTT.

March 16, 1921.

Mr. W. F. Elliott,
c/o Elliott-O'Brien Co.,
Chehalis, Wn.

Dear Sir:—

Thank you for your letter of March 14th, regarding the [105] proposed sale of stock. Your suggestion regarding taxes is good, and should a sale be made we will see that there is a distinct understanding that the purchaser shall pay the 1921 taxes.

Have heard nothing from Mr. Worth since he was in the Bank last Saturday morning. Unless he is willing to pay the present replacement value of the stock, we are in favor of closing out the stock along the lines planned. It would seem that if we threw in the fixtures, which are worth three or four thousand dollars—together with the goodwill of the store, that the purchaser would be making an excellent buy to pay only for the stock. In the event Mr. Worth should agree to pay one hundred cents on the dollar for the stock, the writer would probably come to Chehalis to close the matter up. Would prefer that you be present at that time the agreement was signed—in order that no details might be overlooked.

Yours very truly,

_____,

Asst. Cashier.

CLL:P.

March 16, 1921.

Mr. Coram T. Davis,
Carson, Pirie, Scott & Co.,
Chicago, Ill.

Dear Sir:—

Thank you for your telegram of March 14th, regarding proposed sale of the merchandise stock of Elliott-O'Brien Company. The proposal to buy came from a Mr. Worth who was formerly in the dry goods business in Chehalis, Washington. He has recently sold out a store in Oregon, and has available cash to purchase, but he is evidently looking for a big bargain.

As we see it, there is no object in us giving the stock away, and if he unwilling to pay one hundred cents on the dollar for the stock we are inclined to proceed with the plan to close the store out by disposing of the stock gradually to customers until it has been reduced to ten or fifteen thousand dollars, when it would be easier to find a purchase. This is probably going to be difficult to accomplish, however, as some one might step in and demand that a receiver be appointed. The stock is evidently worth somewhat in excess of the debts, but it is going to be another question to realize on the stock as rapidly as the obligations mature.

The telegram to you was sent at the request of Mr. Worth, but we have heard nothing from him since that date. He seemed to be anxious to get the store and we believe that he will yet meet our proposition. It appears to us that if we sacrifice the fixtures, which are carried on the books for an

amount between three and four thousand dollars, also the goodwill—whatever that may be worth, the purchaser would obtain an excellent buy by taking the merchandise off our hands at the present market value. Will drop a note to Mr. O'Brien at the Waldorf-Astoria, and tell him what is being considered.

Very truly yours,

_____,

Asst. Cashier.

CLL:P. [106]

March 19, 1921.

Mr. W. F. Elliott,
c/o Elliott-O'Brien Co.,
Chehalis, Wash.

Dear Sir:—

Having heard nothing further from Mr. Worth concerning the proposed purchase of the store, we presume that he has given up the matter. Therefore unless other offers come to us we will proceed to liquidate the stock according to our original plan. If we accomplish this successfully it will require the greatest economy in operation in the store, an absolute stop of all purchases, and careful consideration given to expenditures.

Your very best judgment will be required concerning the question of order in which invoices shall be paid. No doubt some of the firms will be inclined to press for payment, while others will be more lenient. Our greatest difficulty will be to keep away from a receivership, and this can only be done by keeping everyone satisfied. It is our judgment that even if we cannot make large payments to the

creditors—that if we continue to make numerous small payments we will probably retain their confidence.

In your opinion there are two or three months of good business ahead of you, and by that time the stock should be reduced to approximately $15,000.-00. If the store can be carried along until that time there should be little trouble in disposing of same.

With best regards, I am

Yours very truly,

_____,

Asst. Cashier.

CLL:P.

ELLIOTT-O'BRIEN COMPANY.

Chehalis, Wash., March 28, 1921.

Mr. C. L. LeSourd,

Dexter Horton Trust & Savings Bank,

Seattle, Washington.

Dear Sir:

Received a wire from Carson, Pirie, Scott & Co. this A. M. advising me that they had mailed letter Saturday last containing full particulars; will advise you if there is anything of importance contained in the letter.

Our sales manager is here from Portland and has started preparations for the final thirty day sale. They claim they can dispose of $16,000.00 worth of goods during the thirty days sale above making all the expenses. If they can do this it will leave us with a stock of $10,000, or thereabouts, plus fixtures, totalling $4000.00. [107]

We are hoping to have a buyer lined up by that

time to take this over. We shall have all indebtedness paid, with the exception of about $2000.00. If we could dispose of the remnant of the stock and fixtures at sixty cents on the dollar, at the market price, it would give us $8400.00 less the $2000.00 owing by us, leaving a net balance of $6400.00, say, conservatively, $5000.00. This should absolve me of all indebtedness to the Firm, also personal notes to Mr. O'Brien. *I would like to have this distinctly understood.*

I feel that Mr. Hart should be entitled to something more than just his expenses which amount to about $125.00 monthly. He is very valuable at this time.

I feel with the thirty days sale on I should be here until the affairs of the business are wound up, that may even occur during the thirty days.

Should I accept Carson, Pirie, Scott & Co. proposition it might be possible for me to go to Chicago about April 15th, and return here at the end of the month. Believe that under the circumstances they would be willing to have me do this. Will advise you in a few days. If this letter contains anything of moment.

Yours very truly,

W. F. ELLIOTT.

THE MOTTMAN MERCANTILE CO.

Olympia, Washington, 4/6/21.

Mess. Dexter Horton Co.,

Seattle, Wn.

Gentlemen:—

We understand that you will have the final say in the disposition of the stock and fixtures of the Elliott-O'Brien Co. Chehalis Wash. and what remains thereof unsold when the closing and sale now in progress is over with, if this is correct information we would like to know what you expect to realize out of the remnants upon a cash basis?

Yours very truly,

THE MOTTMAN MERC. CO.

A. M. MOTTMAN.

April 7, 1921.

The Mottman Mercantile Co.,

Olympia, Washington.

Gentlemen:—

Relative to disposition of stock and fixtures of Elliott-O'Brien Company, Chehalis, wish you would communicate with Mr. W. F. Elliott, Treasurer of the Company, who is Manager of the store at Chehalis.

Yours very truly,

_____,

Asst. Cashier.

CCL:P. [108]

ELLIOTT-O'BRIEN CO.
Chehalis, Wash.
THE MOTTMAN MERCANTILE CO.,
Wholesale Jobbers & Retailers.
Olympia, Wash., April 8, '21.

The Elliott-O'Brien Co.,
Chehalis, Washington.

Gentlemen:—

Replying to your telegram of this day will say when you get through with your present closing out sale I may look over your remnants and fixtures and make you an offer—if I can figure out a way to use them at all.

Chehalis is a badly demoralized town as far as the Dry Goods business is concerned— it is along with Centralia the best looking town in the State of Washington and the poorest business town, largely brought about by the store-keepers themselves, cutting everybodies throat, including their own. The buying public has no confidence in the merchants and the merchants have no confidence in themselves or their fellow merchants. A price ticket means nothing to the Centralia and Chehalis storekeepers not to themselves—their help—nor the public. The field is not inviting to people whose training is along legitimate lines.

Frankly speaking, had I known that such conditions existed in Chehalis as we found out to our loss and sorrow, we never would have opened a store there. My son succeeded in dropping over $10,000 in the last eight months, partly legitimate through shrinkage of values and partly due to demoralized business conditions.

A great deal of this letter is structly personally and confidential and we hope you will so consider it.

Thanking you and congratulating you for leaving such a nerve wracking field and wishing you success and prosperity in your future undertaking, I am

Yours very truly,
Signed—GEO. A. MOTTMAN.

(Copy of original.)

ELLIOTT-O'BRIEN CO.

Chehalis, Wash., April 8, 1921.

Mr. C. L. LeSourd,
Dexter Horton Trust & Savings Bank,
Seattle, Wash.

Dear Sir:—

Mr. Elliott's letter of yesterday will explain his attitude regarding giving us a Bill of Sale of the Automobile. His ulterior motive is to force a judgment against him in order that he may go into bankruptcy and thus clear him of his liabilities. The matter now rests with you as to what action you think advisable. [109]

In regard to business. The sale is not coming up to expectations, the average sales not going over $275.00 daily so far. As the bank has taken a determined stand for immediate payment of their loan, or at least $1000.00 weekly, I am fearful that some creditor may step in and close us up.

There are several accounts long past due and I cannot see how they can be satisfied to the extent of allowing us to continue much longer on the

basis we are now conducting the business. In order to do any business at all, we have got to slash prices to such an extent that it will mean no surplus over and above the liquidation of wholesale bills and the bank. Elliott's optimism as regards a surplus is only speculative; his expectations have never been realized since I have had any check on him.

We are going to run a special sale next week in which we will advertise goods at half price, which figures out would amount to what we would have to take in selling the stock at market prices. I have suggested getting in touch with Mr. Worth again to the effect that we will take inventory the last week of the sale suggesting that if he is still interested, to come here and take inventory with us and then make us an offer. I believe I will write him to-day. We have not received any response to our advertisement thus far and judging from the inquiries we have had, they look anything but promising.

Please treat this information as confidential so far as Mr. Elliott is concerned. With kind regards.

Yours very truly,

Signed—A. E. HART.

April 9, 1921.

Mr. Donald G. Abel,
Attorney at Law,
Centralia, Washington.

Dear Sir:—

This letter is written you at the suggestion of the

Attorneys for this Bank, Messrs. Poe and Falknor:

In order that you may have a clear understanding of the matters referred to herein—so that you may know whether or not you care to take over the case, we will go into the history of same quite completely:

About two years ago this Trust Company was named as Administrator with Will annexed to the Estate of E. M. O'Brien, deceased. Mr. O'Brien was a wholesale dry goods salesman and represented Carson, Pirie, Scott & Co., of Chicago, in the Northwest, having his office in Seattle. His estate descended in equal shares to C. H. O'Brien, a brother of Chicago; Alice B. O'Brien, widow, now of San Francisco, and several minor nieces and nephews of Salt Lake City, who divided among themselves a one third interest in the estate.

Several years before Mr. O'Brien's death, he entered into a corporation known as the Elliott-O'Brien Company, operating a dry goods store at Chehalis, Washington. [110]

The store was incorporated for $15,000.00; Elliott taking seventy five shares, and O'Brien taking seventy five shares. According to the information which we have, Elliott had only $4500.00 to invest, and accordingly O'Brien loaned him $3000.00, taking part of his stock as collateral security. This note of Elliott's was included in the assets of the estate and was accepted by C. H. O'Brien as cash in distribution. The one-half interest in the store belonging to O'Brien was distributed—as suggested above—twenty-five shares to C. H. O'Brien, twenty-five shares to Alice B. O'Brien, and twenty-

five shares among the six nieces and nephews at Salt Lake City.

In addition to the indebtedness mentioned above, Elliott borrowed money from C. H. O'Brien, giving the balance of his stock in the Elliott-O'Brien Company as collateral security. In other words, we are now holding for collection for C. H. O'Brien notes by Elliott for $4500.00; with seventy five shares of stock of Elliott-O'Brien Co., as collateral. We are also holding the certificates of stock for twenty five shares belonging to C. H. O'Brien. The latter recently left for Europe, sending a general Power of Attorney to the writer, asking that I look after his interest with reference to matters at Chehalis.

The store has never paid a dividend, largely due to poor management upon the part of Mr. Elliott. He is without a good salesman but has never bought wisely, and has never been able to sell the amount of goods that he expected to sell. At the end of December he sent us a statement of the Company's affairs, as per copy enclosed. The Inventory is without doubt much too high and there is grave question whether or not the business will more than pay the indebtedness, and it has been decided to carry on a closing out sale and liquidate the corporate business in that way. Some specialists in sales have been brought up from Portland and are now trying to reduce the stock as rapidly as possible, with the hope that if they can bring the inventory down to $10,000.00 or $15,000.00, a buyer can be found. I am extremely doubtful whether this

can be accomplished, inasmuch as the sale is not proving a success and creditors are beginning to press for payment of their account. The Coffman-Dobson Bank has made a demand for payment of $1000.00 per week upon their account. We feel that a Receivership is imminent. Possibly that is the best way out of the affair.

In addition to the salary which Mr. Elliott has drawn from the corporation—from time to time he has taken additional cash—charging the same to his account. This was done without the approval of Mr. O'Brien, although so far as we know he never took any drastic steps to stop it. At the time of Mr. O'Brien's death this account was in the neighborhood of $3500.00. Since that time and positively without the approval of others interested in the firm—Elliott has withdrawn for his personal use something like $1500.00, so that his indebtedness to the corporation on open account is now about $5000. It seems to me that a charge of larceny could be sustained against him on this account.

Among Mr. Elliott's assets is an automobile which has a value of nearly $1000.00. Just before Mr. C. H. O'Brien left for Europe, he wired to me, asking that I make demand upon Elliott for the sale of the Automobile, making application of the proceeds on the notes which we hold. Mr. Elliott has replied that he would do this providing the notes were canceled and returned. We are, of course, particularly anxious to protect the interest of C. H. O'Brien, whom we represent by Power of Attorney, but also would like to see the other heirs of

Ed. O'Brien obtain something from the assets of the store, if possible.

Would this be a matter in which you could represent us, and if so, upon what basis would your charges be fixed? The writer has no money of C. H. O'Brien in his possession, and would prefer that [111] your charges be placed upon a percentage basis, if that is entirely satisfactory to you.

Should you wish to obtain authority direct from the widow at San Francisco, and from the children at Salt Lake, we believe that this could be easily done without great delay. Most of the children in Salt Lake are minors, and are represented by Halloran-Judge Trust Company, their guardian. It is our impression that with a little pressure Mr. Elliott will do almost anything that is asked of him in the way of making a settlement of his account—but without doubt at this time his desire is to have someone force him into involuntary bankruptcy, and thus clear up his debts. He is hoping to get away from the store within the next two or three weeks, so that he may accept a position as traveling salesman for Carson, Pirie, Scott & Company.

Would be glad to hear from you if you care to take over this case, and if you will, will gladly send to you a bundle of correspondence regarding same.

Yours very truly,

_____.

CCL:P.

April 11, 1921.

Mrs. Alice B. O'Brien,
Plaza Hotel,
San Francisco, Cal.

Dear Madam:—

We regret to advise you that at the present time it appears as if you would receive little or nothing from your stock in the Elliott-O'Brien Co., at Chehalis, Washington.

At the time of the administration of the estate the valuation of par was placed upon the stock, largely due to reports as sent out by Mr. Elliott, the manager of the store. After the administration we did not keep in close touch with Mr. Elliott, and now find that matters are in a very serious financial state. A heavy stock of goods has been carried on hand for several years, and as prices dropped subsequent to the close of the war a severe loss ensued.

One of the assets of the corporation as shown by its books, was the personal indebtedness of Mr. Elliott to the corporation, of several thousand dollars. This obligation is without doubt worthless at this time. Recently Mr. C. H. O'Brien left this country on a trip, sending to the writer Power of Attorney to represent him in connection with matters at Chehalis. You will probably recall that Mr. O'Brien accepted as cash Mr. Elliott's personal notes for a considerable amount in the disposition of the estate of E. M. O'Brien. As Mr. Elliott has no considerable amount of property other than his interest in the store—you will see that Mr. C.

H. O'Brien will not only receive nothing for his stock in the corporation but will also lose the face value of the notes.

We have been trying to find a purchaser to take over the store as a going concern, but have been unable to obtain an offer of more than sixty cents on the dollar for stock and fixtures. [112] This would hardly pay the indebtedness, and we have been trying special sales to convert as much of the stock into cash as possible. It is probable that the store may be closed and placed in the Receivers hands—should some of the creditors demand payment of their accounts.

We are hoping that some small amount may be saved for the share holders, but are dubious at this time.

Yours very truly,

_____,

Asst. Cashier.

CLL:P.

April 11, 1921.

Mr. L. W. Sowles Vice President,
Halloren-Judge Trust Co.,
Salt Lake City, Utah.

Dear Sir:—

We regret to advise you that from present appearances little or nothing will be realized by the heirs of E. M. O'Brien from shares of stock of Elliott-O'Brien Company, at Chehalis, Washington.

A valuation of par was placed upon the stock at the time of the administration, and was largely based on reports sent out by Mr. Elliott, the man-

ager of the store. He is very optimistic by nature; constantly seeing where profits can be realized, but as a matter of fact the store has never shown any profits since its operation. With a very small working capital he has carried a large stock of goods, running from thirty to forty thousand dollars, and as a consequence had a very large indebtedness outstanding against the store. On account of decline in values subsequent to the end of the War, a heavy loss was taken and during the last few months sales have been very light because of quiet times in the Northwest.

One of the assets of the corporation consists of personal indebtedness of Mr. Elliott on open account. This amounted to several thousand dollars, and is doubtless a complete loss, as he is at present without assets other than stock in the store. At the time of distribution of E. M. O'Brien's estate, the brother, C. H. O'Brien, accepted Elliott's notes for a considerable amount, and as you will readily see—he stands to lose the face amount of these notes in addition to the twenty-five shares of stock in the store.

Creditors of the company have become somewhat uneasy of late and have been pressing for payment of their accounts. Elliott has been trying to find a buyer but the best offers received was only for sixty cents on the dollar for stock and fixtures, which would just about pay the debts. During the last two or three weeks a specialist from Portland was obtained to assist in putting on a sale—with the expectation that the stock could be reduced to about

fifteen thousand dollars, when it was hoped to find some purchaser to take over the business as a going proposition. This sale has proven a disappointment, as it appears that there is not enough ready money in the community to make it a success. It would not surprise the writer at [113] any time to hear that some creditor had asked for a Receiver to be appointed, as there are several accounts considerably past due and the local Bank has demanded payment of its notes.

We are giving you this information so that you may advise the parties interested that they will probably be disappointed if they expect any return from their shares of this stock.

Yours very truly,

_____,

Asst. Cashier.

CLL:P.

D. G. ABEL,
Attorney at Law,
Chehalis, Wn.

April 11, 1921.

Dexter-Horton Trust and Savings Bk.,
Seattle, Washington.

Gentlemen:—

Attention Mr. C. L. LeSourd.

I received your letter of April 9th in regard to the Elliott-O'Brien Company and will say that I am perfectly at liberty to take any steps in this matter that you may desire.

I would suggest that you send me your files in this matter and since you have studied the matter

over for sometime, I would like to have your suggestions as to the best course to pursue at present.

From all the information that I have, the car of Mr. Elliott's is the only asset he has, outside of any possible interest he might have in the store.

Your suggestion that my charges be placed on a percentage basis is satisfactory to me, however, at present I could not estimate the amount that will be involved or what we might have a chance to recover. Fifteen per cent on the first thousand and five per cent on the balance obtained from Mr. Elliott will be satisfactory with me.

I understand that Mr. Elliott intends to leave here by the last of this month and I will proceed at once against him if you so desire.

Very truly yours,
Signed—D. G. ABEL.

AJS:DGA.

ELLIOTT-O'BRIEN CO.
Chehalis, Wash., April 13, 1921.

Mr. C. L. LeSourd,
Seattle, Wash.

Dear Sir:— [114]

Mr. Abel's letter to you will explain Mr. Elliott's attitude regarding Bill of Sale for Automobile. The only expression that I could get from him was that, while the matter in question might be a legal obligation, he did not consider it a moral one and consequently feels that he should be released from the notes in exchange for the automobile.

From the gist of his interview with Mr. Abel it appears that Mr. Abel took sides with him; that

may have been due in a measure to being a friend of his instead of ours.

I believe it will be necessary for you to come here for a day before Elliott leaves for Chicago in order to make the change of management and also to receive from him a complete detailed statement of the affairs of the company. I would suggest that as soon as we take inventory and make the trip. At that time we must get a complete and correct statement of the Company's indebtedness including all past due, now due and falling due wholesale bills. After you receive this you will know how to proceed in the event of any of the creditors demands for settlement; Elliott cannot see how, with the poor business we are doing, we are going to meet our obligations and I am just as pessimistic. Our sales have dropped to less than $200 daily. As soon as Elliott leaves here, I can get along on less help, at least let two clerks go which will be the equivalent of the rent.

Will advise you before the completion of the inventory in order that you may plan to come down. With kind regards,

Yours very truly,
A. E. HART.

April 14, 1921.

Mr. Coram T. Davis,
c/o Carson, Pirie, Scott & Co.,
Chicago, Ill.

Dear Sir:—

Quite a serious situation seems to have developed

in connection with the Elliott-O'Brien Company at Chehalis. In order that we might have more reliable information that we were able to obtain from Mr. Elliott, we thought it wise to send Mr. A. E. Hart down to the store two or three weeks ago. Mr. Hart—you will remember, was connected with the Seattle office of Carson, Pirie, Scott & Co., for several years. Private letters have been received from Mr. Hart, and according to his estimate the store will not be able to more than pay its obligations.

A special sale has been put on this month, employing a specialist from Portland who guaranteed to unload $20,000.00 worth of stock in thirty days. It appears that the sale has been a failure, largely for the reason that people are unable to buy because of quiet times in the Northwest, and in Chehalis in particular. The store has been advertised for sale —but no one appears to be especially interested in the matter, as Chehalis seems to have a very black eye in so far as the dry goods business is concerned. Mr. Hart thinks it will be impossible to avoid a Receivership unless someone is found within the near future to buy the store as a going proposition. [115]

You probably remember that we are holding $4500.00 of Elliott's personal notes in favor of C. H. O'Brien, which are collateraled by one-half of the stock in the store. Just before C. H. left New York for Europe he wired—asking us to make demand upon Elliott for the sale of his Automobile and application of the proceeds upon these notes.

This demand was made at once, Elliott will only turn over the car on condition that we cancel and return to him all the notes. He takes the position that while he may be legally liable upon these notes, he feels no moral liability, as the O'Briens have obtained considerable commissions on sales to the store during the last few years. Evidently what he wants is for someone to force him into involuntary bankruptcy, and thus clear him of his debts.

By returning the notes we could obtain the car, which is probably worth between $800.00 or $1000.-00. I hardly feel that I am authorized to compromise on this basis without receiving your advice. It is our belief that this is about the only way Mr. C. H. O'Brien will obtain anything from the whole proposition.

During the administration of the estate, Elliott made different payments totaling $2000.00 on account of his personal note in favor of E. M. O'Brien. He now claims that these amounts were taken from the assets of the corporation and charged upon the books to his personal account. He has been talking with his bankers and lawyer and they have led him to believe that the heirs of E. M. O'Brien will be required to return this amount in the event that the creditors could not be paid in the liquidating of the store. We can hardly believe that the Courts will take any such position in this matter, as at that time the corporation seemed to have a surplus account, considerably more than was taken by Mr. Elliott, and whatever amounts were taken out by him were not distributions of the capital.

You will see by what we have stated above that Elliott has not only mismanaged the store, but is now trying to avoid payment of his personal obligation. He wishes to get away from the store by the end of this month, stating that he going to accept a position as salesman for Carson, Pirie, Scott & Co. Whatever action we take in this matter must be taken at once. Upon receipt of this letter wish you would wire me at our expense, stating whether you think we should surrender the $4500.00 of notes upon delivery of the Automobile.

Thanking you for your consideration of this matter, and an early reply, we are

Yours very truly,

_____,

Asst. Cashier.

CLL:P.

D. G. ABEL,
Attorney at Law,
Chehalis, Wn.

April 14, 1921.

Dexter-Horton Trust & Savings Bk.,
Seattle, Wn.

Gentlemen:—

Attention Mr. C. L. LeSourd.

I received your letter of April 13th, and in order to keep you advised as far as I know of the steps Mr. Elliott is taking will say that he is now conducting a sale of his household goods and also has [116] his automobile up for sale.

His wife expects to leave this City next Sunday and he is to leave shortly thereafter.

Very truly yours,

D. G. ABEL.

AJS:DGA.

April 16, 1921.

Mr. D. G. Abel,
Attorney at Law,
Chehalis, Wash.

Dear Sir:—

Kindly accept our thanks for your letter of April 14th, regarding Mr. Elliott's plans to leave your City. Something definite will be done in connection with the Automobile the first of the week.

I am awaiting advice from Chicago relative to this matter, not caring to take the responsibility without approval from Mr. O'Brien's home office.

Yours very truly,

_____,

Asst. Cashier.

CLL:P.

April 18, 1921.

The Mottman Mercantile Co.,
Olympia, Wash.

Gentlemen:

Have received your offer of $2500.00 for shelving and fixtures of Elliott-O'Brien Company, at Chehalis. We have not wired reply because we are not in a position to sell the fixtures without conferring with Mr. Elliott, Manager of the store. In any event we would not care to dispose of the fixtures

before some disposition was made of the stock of merchandise.

The writer expects to go to Chehalis some time this week, and will advise you of our decision at that time.

Yours very truly,

_____,

Asst. Cashier.

CLL:P. [117]

April 18, 1921.

Mr. W. F. Elliott,
c/o Elliott-O'Brien Co.,
Chehalis, Wash.

Dear Sir:

Your letter offering to turn over a bill of sale to your Automobile in favor of C. H. O'Brien upon cancellation of your notes was duly received, and has remained unanswered awaiting advice from Mr. Davis, of Chicago, as to his wishes in the matter. When Mr. O'Brien went away on his trip—he left the settlement of matters at Chehalis in the hands of Mr. Davis and the writer. Have just received the following telegram from Chicago:

"Elliott's position reference notes seems unreasonable, especially in view O'Brien's many years loyal support both financial and moral. Think Elliott should gladly volunteer sale of personal luxuries to offset his note. Unless he has this spirit fair play cannot conceive he is type of man my firm would want to employ."

Under the circumstances it seems to me the very best thing that you could do would be to turn over

the car at once and apply the proceeds on the notes which we hold. Unless this is done, you will probably be handicapped in your new relation with Carson, Pirie, Scott & Co. Will you please advise us at once what action we can expect from you in this matter.

A telegram was received today from the Mottman Mercantile Company, of Olympia, offering $2500.00 for shelves and fixtures of Elliott-O'Brien Co., with the understanding that we would convey same with free title. This would mean paying up for Cash Register, and would really only net about $1900.00 as I understand that there is a balance of $500.00 due on the Register.

I do not see how *can* can dispose of the fixtures and make delivery of same until the stock of merchandise has been sold. We might entertain some proposition to sell the fixtures and make delivery only upon closing out of the stock. Have been thinking that I might go down to Chehalis one day this week, and we could dicuss this matter at that time.

If you think there is any urgency about accepting this offer from Olympia, you might telephone me tomorrow.

Very truly yours,

_____,

Asst. Cashier.

CLL:P.

WESTERN UNION TELEGRAM.

Olympia, Washington 8:28 A. Apl. 18, 1921.

Mr. LeSourd,

c/o Dexter Horton and Co. Bankers, Seattle, Wash.

Looked over stock of Elliott OBrien Company Chehalis yesterday will give you twenty five hundred dollars cash for stock shelving and fixtures subject to clear title and immediate acceptance wire answer.

THE MOTTMAN MERC CO. [118]

THE MOTTMAN MERCANTILE COMPANY.

Olympia, Washington, 4–19–21.

Mr. C. L. LeSourd,

Seattle, Wn.

Dear Sir:

Judging from the tone of your letter of yesterday the message must have been somewhat garbled in its transmission and to avoid any misunderstanding we want to explain at this time, that we are willing to pay for stock-shelving—and fixtures $3000 to $3500, three thousand to thirty five hundred dollars cash.

The stock of goods is badly shot to pieces and while Mr. Elliott has some ideas that the stock is worth a lot of money, close examination of the same brings to light the exact opposite.

Yours very truly,

MOTTMAN MERC CO.

Geo. A. Mottman.

April 20, 1921.

The Mottman Mercantile Company,
Olympia, Wash.

Gentlemen:

Cannot say that we understand your proposition any more clearly after receiving your letter. According to the best information we can obtain there is a stock of merchandise in the store of approximately $20,000, value, with fixtures on hand worth from three to four thousand dollars. If your offer of from $3000.00 to $3500.00 is for the entire merchantable stock and fixtures—it will not be considered for a moment.

The writer expects to be in Chehalis Friday morning and if you care to send a representative there to make an offer for the stock, you may do so, but unless the offer is largely in excess of the one mentioned, it would be a waste of your money to send anyone down.

Yours very truly,

_____,

Asst. Cashier.

CLL:P.

April 23, 1921.

Mr. Coram T. Davis, Atty. at Law,
#300 West Adams Street,
Chicago, Ill.

Dear Mr. Davis:

Have just received your letter of April 19th, and am very glad to have an expression of your ideas concerning the collection of notes from W. F. Elliott. The telegram which you sent a few days ago fur-

nished me with just the leverage I desired to use upon Mr. Elliott. Immediately upon its receipt I communicated its contents to Mr. Elliott and then made a personal visit to Chehalis yesterday. [119]

Without much trouble Mr. Elliott turned over to us a bill of sale for the Automobile which I immediately recorded. Title now rests in the name of C. H. O'Brien, and the Power of Attorney which I have permits transfer to purchaser.

We are sending a young man from the Bank today to Chehalis, to drive the car here, as we fear there may be some legal complications if the machine is allowed to remain there. The automobile is an Overland Sedan, last year's model. Elliott thinks it should be worth approximately $1000.00 but has been unable to obtain any such offer for it, and we are inclined to think that price a little too high. Second hand cars are rather a drug upon the market at the present time. We will endeavor to realize as much from the car as possible, as we believe that is all Mr. O'Brien will obtain from his notes.

Mr. Elliott did not require the surrender of the notes, so that Mr. O'Brien will be in a position to enforce payment later on if Mr. Elliott has anything with which to pay. We are inclined to believe that for the present Mr. O'Brien had better accept what he receives from the car and forget the rest.

Spent most of the day taking off from the Elliott O'Brien Company's books a list of their indebtedness, which seems to be in the neighborhood of $19,000.00. An inventory of the merchandise stock is to be taken beginning tomorrow, and this will

enable us to determine just what is the proper procedure for the store to take. If it seems impossible for the store to pay its debts we will suggest that all stock be turned over to the creditors at once.

Yours very truly,

_____,

Asst. Cashier.

CLL:P.

April 23, 1921.

Mr. A. E. Hart,
c/o Elliott-O'Brien Co.,
Chehalis, Wn.

Dear Sir:

After leaving the store yesterday, I called at the Coffman-Dobson Bank, but was unfortunate in not being able to see Mr. Coffman. I had a talk with Mr. Donahue, the Vice President, regarding matters concerning the store. I thought it wise to let him know that matters were in a serious shape, so that they would not expect application on their notes of every dollar that is taken in by the store. I told him that there were many other creditors who would have to be satisfied if the store was to continue in operation, but that all intended to take care of the Bank's obligation just as rapidly as possible under the circumstances. [120]

After leaving the store it occurred to me that I had not written down among the obligations the unpaid balance due on the Cash Register. When convenient, drop me a note telling me amount of unpaid balance.

Have received your letter containing statement

of Bills Due, but have not had time to go over them carefully. Will be very much interested in receiving your figures of inventory, so we may see just where we stand financially.

With personal regards, I am,

Sincerely yours,

_____,

Asst. Cashier.

CLL:P.

ELLIOTT-O'BRIEN CO.

Chehalis, Wash., April 28th, 1921.

Mr. C. L. LeSourd,
Dexter Horton Trust & Savings Bank,
Seattle, Wash.

Dear Sir:

Mr. Elliott took his departure this morning. I have a statement of our Assets and Liabilities to date to submit to you in person. I had not intended going to Seattle this week, but it is important that I should do so in order to go into details that cannot be satisfactorily explained by correspondence.

Mr. Jerome Walters of Aberdeen called last evening again in regard to buying the stock and fixtures and has made us an offer. I believe after I have gone into the matter with you we may be able to arrange with the creditors whereby they would receive 75c instead of a possible 25c; in the event of it going into a Receiver's hands.

I will not leave Chehalis until 3 a. m. Sunday morning as I have to be here for the wind up of Saturday business; we keep open until 9 p. m. I will call on you on Monday morning next.

Yours very truly,

A. E. HART. [121]

Page 4—TRIAL BALANCE. TRUSTEE'S EX. B.

1921	Stock (Brt ford)	Misc Recd.	Expense & Frt.	Total	Misc Due	Misc Not due	Total	Total Sales	Stock on hand	Rent	Water & Light	Meeting	Insurance	Taxes	Delivery & Tel.	Stationery & Postage
Jan.	27862.25	2580.16	117.88	2698.04 (64674.65)	3970.68	7108.15	11078.83	6026.yy. (88644.84)	26271.29	125.00 (1365.00)	24.98 (261.76)	(60.80)	(425.40)	(29.00)	127.75 (868.40)	94.84 (470.95)
Feb.	26371.39	2274.18	146.24	3420.39	3436.14	9291.39	12727.53	4636.94	26546.92	125.00	42.25				66.04	122.07
Mar.	26546.98	4476.35	126.58	4603.93	4788.79	9827.45	14316.24	4717.19	27847.81	125.00	25.60	80.32			79.80	84.57
April 25	27847.81 14816.29	249.84	19.69	269.53	8693.19	3923.42	12616.61	8977.45	14816.29	150.00.	24.00	15.55			67.44	136.84

PAGE 5 TRIAL BALANCE TRUSTEE'S EX. B

1921	Salaries	Advertising	Sundries &Donations	Interest	Total Expenses	Discounts	Gross Profits Misc	Total Gross Profits	Net Profits	Net Loss	LIABILITIES Net Worth	Notes	Sundries	Cash on hand & in bank	Interest
Jan.	1186.35 (12484.23)	687.50 (3238.80)	60.69 (718.05)	111.39 (1149 .54)	2398.78 (30761.93)	44.74	1988.05	2032.79		365.98	11784.98	6000.00	1576.20) 1523.55)	177.87	
Feb.	1002.97	97.32	61.88	40.96	1648.49	11.29	1591.08	1402.36		144.13	11608.85	5800.00	1576.20 1965.35	284.10	
March	1133.95	41.40	35.70	37.50	1583.84	4.81	1416.15	1419.96		163.88	11444.97	5800.00	896.00 823.30	69.88	
April	1801.60	1072.33	81.58	58.89	2806.29	16.94				8499.90	2945.07	3000.00	184.00 (Bs) 64.00 (Adv)	(309.99) Dr)	

3346.

Elliott–O'Brien,

Trustee's Exhibit "C."

In Account With

CARSON, PIRIE, SCOTT & COMPANY.

300 West Adams St.

Chicago, 7–19–21.

Elliott-O'Brien Co.
Chehalis, Wash.

Balance Jan. 1st, 1921				6590.47
Bal. due on remittance of 2/24/21 Int. for overtime...				3.64
Bal. due on remittance of 2/4/21 Credit used twice....				2.25
Bal. due on remittance of 4/29/21 Int. for overtime...				17.59
Bal. due on remittance of 3/5/21 Int. for overtime....				5.37
Bal. due on remittance of 4/1/21 Int. for overtime....				8.19
1921	Net Cash	2% 10 days	6% 10 days	
Jan. 6		16.91		
7		233.76		
8		9.85	.65	
12	11.25			
13	15.91			
17		210.93		
		5.32		
Mar. 8		61.50		
24		33.51		
31		30.48		
	Crd. Mdse.			
Jan. 5		14.62		
6		21.14		
18	25.97			
13	9.00			
	7.81	566.50	.65	559.43
				7186.85

		Crd. Cash.			
Jan.	6	265.50	233.76	.65	7186.00
Jan.	25	265.50			
	27	495.55			
Feb.	4	517.54			
	24	661.59			
Mar.	5	715.80			
Apr.	1	589.66			
	25	500.00			
	29	508.47			4254.11
					2932.74
		Int. on past due acct.....			29.44
					2962.18

[124]

Trustee's Exhibit "G."

COPY.

#3346.

In the Superior Court of the State of Washington, in and for Lewis County.

BEE-NEGGET PUBLISHING CO., a Corporation,

Plaintiff,

vs.

ELLIOTT-O'BRIEN CO., a Corporation,

Defendant.

ORDER.

WHEREAS, it appears to the Court, from the complaint of the plaintiff, and the answer of the defendant filed herein, that the defendant is a corporation and is insolvent, and that, therefore, its assets are a trust fund for the benefit of creditors equally and ratably, and that there is imminent danger of

their not being so applied, and of certain creditors obtaining priority over other creditors, and that plaintiff is a creditor of the defendant and brings this action on behalf of all creditors similarly situated, plaintiff seeking no preference or priority; that a necessity exists for the appointment of a receiver of the assets of the defendant for the purpose of winding up the assets of the defendant and properly apply the assets and it further appearing to the Court that George R. Walker is a fit and proper person to act as such receiver; that the assets of the defendant are of the reasonable value of $12,000.

IT IS NOW ORDERED:

That George R. Walker be, and he is hereby appointed as receiver of the assets of the defendant and directed to forthwith take possession and control of the same and to return to this court as soon as possible an inventory of the said assets and he shall continue to operate [125] said business until further orders of this court, keeping the same a going business in order to effect a more advantageous sale thereof, if such sale be found advisable, and such receiver shall in all respects comply with the law and order of this court, and he shall take oath as prescribed by law and file herein, as required by law a good and sufficient bond in the penal sum of $1500.00, to be approved by the Court, before entering upon his duties.

At the time of the entry of this order appeared Hull and Murray, attorneys for plaintiff, and D. G. Abel, attorney for defendant.

By the Court, May 7th, 1921.

W. A. REYNOLDS,
Judge. [126]

EXHIBIT "D," and in lieu of "D," as follows:

Statements rendered by Carson, Pirie, Scott & Co., of its account with bankrupt, as follows:

9–23–1920.

Interest due for overtime on bills of December and January paid today, amount.... 42557.08—63.14
Time taken—260 days.

Nov. 5, 1920.

11–12–20—paid 11–25 int. for overtime..... 24.57
11–12–20—paid 11–10 int. for overtime..... 50.25

12–2–20.

Interest due as for overtime on bills of March paid today—Amount .....4–52—32.65
Time taken—253 days. [126½]

Trustee's Exhibit

AME	Claim filed	Payments made less purchases			Percentage of debt paid
bel . G.	(100.00)	1/1/21			
lle: ugen' o.	(6.00)				
ivec te Prtg Co.	39.98	0 x 165.40	124.98		75%
. Nigget Pub Co.	274.25	339.50 x 503.75	574.00	(20%)	68%
emis Bro. Bag Co.	143.75	101.25 x 278.75	236.25		62%
affin's Inc.	16.36	0 x 16.36			0
nkelspiel Co.	205.15	0 x 219.81	14.66		7%
leishner Meyer & Co.	(2494.10)	2714.59 x 1496.77.	1717.26	(9%)	48%
art & Bros. B	358.90	0 x 358.90			0
evi Strauss & Co.	234.03	0 x 242.03	800.00		3?%
ses & Sons. James	9.19	6.13 x 3.06			0
ses Bros Inc.	521.00	0 x 559.75	38.75		7%
ove,Warren & Monroe	59.25	24.49 x 267.34	232.58		80%
core Dry Goods Co. Welton	1280.58	0 x 1307.68	27.10		2%
oss Bros	56.50	0 x 337.75	280.25		83%
orrow & Wegner	178.50	0 x 283.50	105.00		40%
arshall Field & Co.	697.83	0 x 697.83			0
onstich Silk Co.	406.49	0 x 409.61	29.49		7%
mino. S.	17.50	0 x 17.50			0
orth Coast Power Co.	33.80	0 x 33.80			0
oyal Worcester Corset Co.	143.68	158.25 x 161.16	175.75	(9%)	55%
attle Paper Co.	11.70	0 x 11.70			0
chwabacher Bros	66.00	16.50 x 132.	82.50		52%
tandard Broom Co.	121.00	0 x 121.00			0
tandard Paper Co.	21.49	10.04 x 21.49	10.04		31%
nkman-Kirchima Co.	(652.50)				
in City Feed Co.	2.13	0 x 3.66			0
ogue Merchandise Co.	177.86	0 x 441.23	263.37		59%
estern Dry Goods Co.	991.85	904.66 x 1016.71	929.52		48%
cku King & ___ oap Co.	48.50	0 x 48.50			0
ohens Co. A.	23.32	0 x 23.32			0
otany Worsted Mills	164.39	0 x 164.30			0
ouis Cohen	105.00				
eriagner Pub Co.	309.04				
offman Dobson Bank	1800.00	5500 x 800.00	4500.00	(67%)	71%
arson Pirie Scott &Co.	2932.74	6590.47 x 667.11	4324.84	(55)	60%

4 accts listed

5 accts average per cent 30%

Payments to others 4844.50
8824.84
13669.34

50 % of all payments went to Bank and Carson Pirie & Scott.

Respondent's Exhibit No. 1.

#3346.

WHOLESALE ACCOUNTS.

January, 1921.

Carson, Pirie, Scott & Co.	$ 489.02
Carson, Pirie, Scott & Co. (February)	1222.51

March, 1921.

Fleischner-Mayer & Co.	665.44
Carson, Pirie, Scott & Co.	485.10
Western Dry Goods Co.	491.34
B. Hart & Bro.	40.05
Levi Strauss Co.	55.25
H. W. Gossard Co.	16.29
R. Kohara Co.	17.04
R. Kohara Co.	6.28
Moss Bros.	34.50
Moss Bros.	23.00
Schwabacher Bros.	33.00
Love-Warren-Monroe Co.	6.83
Love-Warren-Monroe Co.	180.91
Love-Warren-Monroe Co.	1.56
Bemis Bros. Bag Co.	62.50
Ulius Bros.	92.75
Garrison-Wagoner Co.	6.69
S. L. Hoffman Co.	40.35
Louis Cohen Co.	105.00
S. G. Dress Co.	66.50
Samuel Landau	100.00
Vogue Merchandise Co.	18.22

April, 1921.

Carson, Pirie, Scott Co.	$ 1640.60
Fleischner-Mayer Co.	458.58
Western Dry Goods Co.	659.10
Lees Brothers	472.50
Marshall-Field & Co.	499.30
Landesman-Hirschheimer Co.	367.00
Vogue Mdse. Co.	35.63
Vogue Mdse. Co.	39.05
Vogue Mdse. Co.	71.01
[128]	
Royal Worcester Co.	116.38
Nonatuck Silk Co.	239.06
H. W. Gossard Co.	256.74
Walton N. Moore D. G. Co.	469.59
Botany Worcester Mills	93.89
Santag Hilder Bro.	12.57
Schwabacher Bros.	33.00
Samuel Landua	49.50
Manson & Wegman	178.50
Standard Broom Co.	44.00
Samuel Nemino	17.50
Luckel King & Cake Soap Co.	48.50
Designer Publishing Co.	15.42
Bemis Bag Co.	50.00
F. M. Slack	1.26

May, 1921.

Fleischner-Mayer Co.	$ 1216.54
Carson, Pirie, Scott & Co.	86.82
Landesman-Hirschheimer Co.	285.50
Western Dry Goods Co.	317.16
Royal Worcester Corset Co.	8.81
Lees Bros.	41.00

Walton N. Moore D. G. Co.	709.41
Samtag & Hilder Bros.	55.46
Claflin, Inc.	16.36
Botany Worsted Mills.	70.50
Marshall-Field & Co.	198.53
Nonatuck Silk Co.	34.69
Nonatuck Silk Co.	78.50
Nonatuck Silk Co.	27.87
B. Hart & Co.	33.15
Levi Strauss & Co.	173.54
H. W. Gossard Co.	9.48
L. Dinkenspeil	100.00
L. Dinkenspeil	104.25
Love-Warren-Monroe Co.	59.25
Seattle Paper Co.	7.37

June, 1921.

Fleischner-Mayer Co.	35.00
Carson, Pirie, Scott & Co	63.99
Royal Worcester Corset Co.	15.74
Levi Strauss & Co.	5.24

SUNDRY BILLS.

Advocate Printing Co.	$ 84.00
Bee Nuget Printing Co.	420.50
Taxes—1920	515.44
Kvarno Overland Co.	36.75
Coffman-Dobson Bank & Trust Co.	3500.00
Due Bank	297.04
Grand Total	$18,215.33

[129]

Respondent's Exhibit No. 2.

3346.

ELLIOTT–O'BRIEN CO.

Chehalis, Wash., December 31st, '20.

ASSETS:			
Inventory	27862.25 (net)		
Book accounts	1894.07		
Fixture accounts	3520.22		
Unexpired insurance	235.00		
Wrapping paper	15.00		
Stationery	50.00		
Claims pending	5.20		
Coupons (Standard)	1.80		
Baby bonds—2 @ 4.35	8.70		
Total		$33592.24	
Depreciation on fixtures	$316.82)	610.89	
Wrote off bad accounts	294.07)		
Total		$32981.35	
LIABILITIES:			
Owe for merchandise		12958.11	
Bills payable Coffman-Dobson Bank & T. Co		2500.00	
Bills payable Coffman-Dobson Bank & T. Co		2000.00	
Bills payable Coffman-Dobson Bank & T. Co		1000.00	
Owe bank		292.89	
			18751.00
Net worth			14230.35
Grand total			32981.35

(Cap. Stock 15 M.)

[130]

Petition for Allowance of Appeal.

S. G. Climenson, as trustee of Elliott-O'Brien Co., a corporation, bankrupt, conceiving himself aggreived by the judgment and order of the Court made and entered herein the 13th day of March, 1922, in the above-entitled cause, for the reasons set out in his assignment of error filed herein, hereby appeals from said Judgment and Order to the United States Circuit Court of Appeals for the Ninth Circuit, and prays this Honorable Court to grant him an order allowing an appeal from said judgment and said order to the said United States Circuit Court of Appeals for the Ninth Circuit, and prays that transcript of the record, proceedings and papers upon which decision and Judgment was made, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Ninth Circuit.

NELSON R. ANDERSON,
Attorney for S. G. Climenson, Trustee.

Order Granting Appeal.

S. G. Climenson, as trustee of Elliott-O'Brien Co., a corporation, bankrupt, having heretofore filed its petition for appeal and assignments of error, and having given notice to said claimants, namely, Carson, Pirie, Scott & Co., Coffman-Dobson Bank & Trust Co., and Bee Nuggett Publishing Co., and the Court having duly [131] considered the above

and foregoing Petition and being fully advised in the premises,—

IT IS ORDERED that the appeal prayed for be, and the same hereby is granted, and it is further ordered, that a transcript of the record be transmitted by the Clerk to the Clerk of the Appellate Court.

Done in open court this 13th day of March, 1921.

EDWARD E. CUSHMAN,
Judge.

[Indorsed]: Mar. 13, 1922. [132]

Amended Assignments of Error.

Comes now S. G. Climenson, as trustee of Elliott-O'Brien Co., a corporation, bankrupt, and assigns the following errors committed by the Court during the trial and in the rendition of the judgment and entering the order in the above-entitled matter, entered March 13, 1922, allowing the claims of Carson, Pirie, Scott & Co., and Coffman-Dobson Bank & Trust Co., upon which said Trustee will rely in the Appellate Court:

I.

The Court erred in approving the ruling of the Referee allowing the claim of, and overruling the objections of the trustee to the claim of, Carson, Pirie, Scott & Co. on the ground of preferences received contrary to the Bankruptcy Act prohibiting preferences to creditors.

II.

The Court erred in approving the ruling of the

Referee allowing the claim of, and overruling the objections of the trustee to the claim of, Coffman-Dobson Bank & Trust Co. on the ground of preferences [133] received contrary to the Bankruptcy Act prohibiting preferences to creditors.

III.

The Court erred in approving the finding of fact, if it be a finding, made by the Referee as follows:

That the inventory showing was very good, $26,371.39, and, while *that its* claimant, Carson, Pirie, Scott & Co., was very large, yet the inventory would seem sufficient to pay it, and that, together with the manager's contention that he would reduce the stock, pay its debts, which he did actually proceed to do, might very easily lead claimant to believe that the manager was reducing all debts and not merely its debts; because same is not supported by, and is contrary to, the evidence.

IV.

The Court erred in approving the finding of the Referee, if it be a finding, as follows:

I do not believe that the claimant had knowledge of the insolvent condition of the bankrupt or sufficient reason to believe that it was receiving a preference; because same is not supported by, and is contrary to, the evidence.

V.

The Court erred in approving the finding of the Referee, if it be a finding, as follows:

Unless claimant had knowledge of the purposes of the dominant stockholder to close out the business it was not likely to suspect insolvency; because

same is not supported by, and is contrary to, the evidence.

VI.

The Court erred in approving the finding of the Referee, if it be a finding, as follows:

The case at bar is distinguished from the cases relied on by the trustee in that the creditor was informed by the manager that [134] he could pay his debts by reducing the stock; because same is not supported by, and is contrary to, the evidence.

VII.

The Court erred in approving the finding of the Referee, if it be a finding, as follows:

That Dan Coffman, cashier of Coffman-Dobson Bank & Trust Co., stated at page 145 of the transcript that the bank was liquidating as any other bank was, and if they had cleared up their notes the Bank would likely have accommodated them again; because same is not supported by, and is contrary to, the evidence.

VIII.

The Court erred in finding that said Carson, Pirie, Scott & Co. did not know or believe or have reasonable cause to believe that the transfers would effect a preference; because same is not supported by, and is contrary to, the evidence.

IX.

The Court erred in not finding that Carson, Pirie, Scott & Co. believed or had reasonable cause to be-to believe that a preference was effected by payments made on account as shown by the evidence.

X.

The Court erred in not finding that Carson, Pirie, Scott & Co. believed or had reasonable cause to believe that a preference was effected by payments made on account by the failure of Carson, Pirie, Scott & Co. to introduce correspondence between it and the bankrupt, and the suppression of same, thereby establishing an inference of fact and a presumption of law that they knew, believed or had reasonable cause to believe a preference was effected.

XI.

The Court erred in finding that said Coffman-Dobson Bank & Trust Co. did not know or believe or have reasonable cause to believe that the transfers would effect a preference; because same is [135] not supported by, and is contrary to, the evidence.

XII.

The Court erred in not finding that Coffman-Dobson Bank & Trust Co. knew, believed or had reasonable cause to believe that a preference was effected by payments made on account as shown by the evidence.

XIII.

That the Court erred in approving the ruling of the Referee and in allowing the claim of, and not sustaining the objections of the trustee to, claim of Carson, Pirie, Scott & Co., for preferences received contrary to the laws of the State of Washington prohibiting insolvent corporations from preferring creditors.

XIV.

The Court erred in approving the ruling of the Referee and allowing the claim of Carson, Pirie, Scott & Co., because the facts found do not, according to the laws of the State of Washington prohibiting insolvent corporations from preferring creditors, sustain the judgment.

XV.

That the Court erred in approving the ruling of the Referee and in allowing the claim of, and not sustaining the objections of the trustee to, claim of Coffman-Dobson Bank & Trust Co., for preferences received contrary to the laws of the State of Washington prohibiting insolvent corporations from preferring creditors.

XVI.

The Court erred in approving the ruling of the Referee and allowing the claim of Coffman-Dobson Bank & Trust Co., because the facts do not, according to the laws of the State of Washington prohibiting insolvent corporations from preferring creditors, sustain the judgment. [136]

XVII.

The Court erred in not giving judgment in favor of the Trustee and against Carson, Pirie, Scott & Co., upon the facts found containing all the elements of a preference under the laws of the State of Washington wherein insolvent corporations cannot prefer creditors no matter what the good faith of the creditor may be; knowledge, belief or reasonable cause to believe upon the part of a creditor that a preference was received is immaterial.

XVIII.

The Court erred in not giving judgment in favor of the trustee and against Coffman-Dobson Bank & Trust Co., upon the facts found containing all the elements of a preference under the laws of the State of Washington wherein insolvent corporations cannot prefer creditors no matter what the good faith of the creditor may be; knowledge, belief or reasonable cause to believe upon the part of a creditor that a preference was received is immaterial.

WHEREFORE said trustee prays that said decision, judgment and order be reversed and that said District Judge may be directed to enter a judgment and order sustaining the objections of the Trustee to the claims of said creditors.

NELSON R. ANDERSON,
Attorney for S. G. Climenson, Trustee.

[137]

[Endorsed]: Filed May 9, 1922, F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk. [137a]

Stipulation as to Record on Appeal.

IT IS HEREBY STIPULATED AND AGREED, by and between counsel herein, that the record on appeal shall constitute the following papers and none other, and the Clerk, in preparing the record shall omit all captions, endorsements, acceptances of service and verifications, except file-marks:

1. Claim of Carson, Pirie, Scott & Company.
2. Claim of Coffman-Dobson Bank & Trust Company.

3. Objections of the trustee to claim of Carson, Pirie, Scott & Co.
4. Objections of the trustee to claim of Coffman-Dobson Bank and Trust Co.
5. Answer of Carson, Pirie, Scott & Co.
6. Order of Referee.
7. Petition of review by trustee.
8. Certificate of Referee.
9. Order of Judge Cushman.
10. Opinion of Judge Cushman. [139a]
11. Abstract of testimony as per copy attached.
12. Petition and order allowing appeal.
13. Assignments of errors.
14. Citation.
15. Trustee's Exhibit "A"; part of Trustee's Exhibit "B" as per copy attached; Trustee's Exhibit "C"; that part of Trustee's Exhibit "D," and in lieu of "D" as follows:

Statements rendered by Carson, Pirie, Scott & Co. of its account with bankrupt as follows:

9–23–1920.

"Interest due as for overtime on bills of December and January paid today, amount .....$2557.08—63.14

Time taken 260 days."

Nov. 5, 1920.

11–12–20—Paid 11–25 int. for overtime...34.57

11–12–20—Paid 11–10 int. for overtime...50.25

12–3–20.

Interest due as for overtime on bills of March paid today—Amount.....14.51—32.65

Time taken 253 days.

Trustee's Exhibit "G" and "I."

Respondent's Exhibit #1 as per copy attached and Respondent's Exhibit #2.

IT IS FURTHER STIPULATED AND AGREED, that a transcript of the testimony certified to by the Referee and all exhibits of trustees and respondents may be sent down to the Circuit Court of Appeals as part of the record and need not be printed, and may be used upon said appeal and referred to by either party upon the presentation of said cause in the Circuit Court of Appeals, provided, however, that this stipulation shall not be deemed a waiver of any objections to the competency or admissibility by counsel to the oral evidence on said exhibits. [139b]

Dated this 28th day of March, 1922.

NELSON R. ANDERSON,
Attorney for Trustee,
GEO. N. WOODLEY and
McCLURE & McCLURE,
Attorneys for Carson, Pirie, Scott & Co.
H. H. HULL and
J. EMMONS,
Attorneys for Coffman-Dobson Bank & Trust Co.

[Indorsed]: April 4, 1922. [140]

Citation.

The President of the United States to Carson, Pirie, Scott & Co., a Corporation, Coffman-Dobson Bank & Trust Co., a Corporation, Bee Nuggett Publishing Co., a Corporation, and to George N. Woodley, Walter A. McClure and A. A. Hull, Their Attorneys, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit to be holden at the City of San Francisco, State of California, within thirty days from the date hereof, pursuant to an appeal filed in the clerk's office for the United States District Court Court for the Western District of Washington, Southern Division, in a cause where S. G. Climenson, as Trustee of Elliott-O'Brien Co., a corporation, bankrupt, is appellant, and you are appellees, then and there to show cause, if any there be, why the judgment and decree mentioned in said appeal should not be corrected, and speedy justice done to the parties in that behalf. [140a]

WITNESS, the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, this the 13th day of March, 1922.

EDWARD E. CUSHMAN,
Judge.

[Indorsed]: Mar. 13, 1922. [141]

[Endorsed]: No. 3862. United States Circuit Court of Appeals for the Ninth Circuit. In the

Matter of Elliott-O'Brien Company, a Corporation, Bankrupt. S. G. Climenson, as Trustee of Elliott-O'Brien Company, a Corporation, Bankrupt, Appellant, vs. Carson, Pirie, Scott & Company, a Corporation, Coffman-Dobson Bank & Trust Company, a Corporation, Bee Nuggett Publishing Company, a Corporation, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Western District of Washington, Southern Division.

Filed April 11, 1922.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

At a stated term, to wit, the October Term, A. D. 1921, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Tuesday the ninth day of May, in the year of our Lord one thousand, nine hundred and twenty-two. Present: Honorable WILLIAM W. MORROW, Circuit Judge, Presiding; Honorable WILLIAM H. HUNT, Circuit Judge; Honorable ROBERT S. BEAN, District Judge.

No. 3862.

In the Matter of ELLIOTT-O'BRIEN COMPANY, a Corporation, Bankrupt.

S. G. CLIMENSON, as Trustee of Elliott-O'Brien Company, a Corporation, Bankrupt,

Appellant,

vs.

CARSON, PIRIE, SCOTT & COMPANY, a Corporation, COFFMAN, DOBSON BANK & TRUST COMPANY, a Corporation, BEE-NUGGETT PUBLISHING COMPANY, a Corporation,

Appellees.

Order Dismissing Appeal of S. G. Climenson from Order Allowing Claim of Bee-Nuggett Publishing Company, etc.

This matter coming on regularly for hearing upon stipulation of counsel for the respective parties this day filed, and the Court being fully advised in the premises,—

IT IS ORDERED that the appeal taken by S. G. Climenson, as trustee of Elliott-O'Brien Company, a corporation, bankrupt, from the order allowing the claim of the Bee Nuggett Publishing Company be, and the same is hereby dismissed as to said Bee Nuggett Publishing Company without cost, and without prejudice to the appeal taken as to Carson, Pirie, Scott & Company, and Coffman-Dobson Bank & Trust Company.

IT IS FURTHER ORDERED that the appellant be and hereby is allowed to file an amended assignment of errors and that the same may be printed in lieu of the assignment of errors heretofore made and filed.

In the United States Circuit Court of Appeals for the Ninth District.

No. 3862.

S. G. CLIMENSON, as Trustee,

Appellant,

vs.

CARSON, PIRIE, SCOTT & CO., et al.

Appellee.

Stipulation for Dismissal of Appeal as to Bee-Nuggett Publishing Company, and for Filing of Amended Assignments of Error, etc.

WHEREAS, the trustee herein has taken an appeal from the order entered herein on March 13th, 1922, sustaining the claims of Carson, Pirie, Scott & Co., Coffman-Dobson Bank & Trust Co., and Bee Nuggett Publishing Co., and

WHEREAS, the trustee desires to dismiss appeal from the order allowing the claim of Bee Nuggett Publishing Co., and desires only to prosecute the appeal from the allowance of the claims of Carson, Pirie, Scott & Co., and Coffman-Dobson Bank and Trust Co.—

IT IS STIPULATED AND AGREED that the appeal taken herein from the order allowing the

claim of Bee-Nuggett Publishing Co. shall be dismissed without prejudice to the appeal taken as to Carson, Pirie, Scott & Co., and Coffman-Dobson Bank & Trust Co.

IT IS FURTHER STIPULATED that trustee may file a new assignment of error as per copy attached, and that same may be made part of the record and printed in lieu of the assignment of error heretofore made and entered on March 13, 1922.

Dated this 22d day of April, 1922.

NELSON R. ANDERSON,
Attorney for S. G. Climenson, Trustee.
GEO. N. WOODLEY and
McCLURE & McCLURE,
Attorneys for Carson, Pirie, Scott & Co.
H. H. HULL and
J. E. MURRAY,
Attorneys for Coffman-Dobson Bank & Trust Co. and Bee Nuggett Publishing Co.

[Endorsed]: No. 3862. United States Circuit Court of Appeals for the Ninth Circuit. S. G. Climenson, as Trustee of Elliott-O'Brien Company, a Corporation, Bankrupt, Appellant, vs. Carson, Pirie, Scott & Company, et al., Appellees. Stipulation for Dismissal of Appeal as to Bee Nuggett Publishing Company, and for Filing of Amended Assignments of Error, etc. Filed May 9, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.